

No. 8982

Vol  
2121

IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT

KANSAS CITY LIFE INSURANCE COMPANY,  
a corporation,

*Appellant,*

vs.

BERTHA E. BOWMAN,

*Appellee.*

**Transcript of the Record**

*On Appeal from the District Court of the United States  
for the District of Idaho, Eastern Division.*

FILED

SEP 30 1938

PAUL F. O'BRIEN,  
CLERK



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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

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IN THE DISTRICT COURT OF THE FIFTH JU-  
DICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY  
OF BANNOCK

---

BERTHA E. BOWMAN,

*Plaintiff,*

vs.

KANSAS CITY LIFE INSURANCE  
COMPANY, a corporation,

*Defendant.*

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COMPLAINT

Filed in the State Court, October 25, 1937.

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The plaintiff complains and alleges:

I.

That the defendant now is and at all the times wherein it is hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of Missouri; that said corporation has complied with the Constitution and laws of the State of Idaho, and now is, and at all the times wherein it is hereinafter mentioned

was authorized to do and transact business within the State of Idaho.

## II.

That heretofore and on or about the 25th day of February, 1926, the Continental Life Insurance Company was a corporation duly organized and existing under and by virtue of the laws of the State of Missouri; that said corporation had complied with the Constitution and laws of the State of Idaho, and at the date of the issuance of the insurance policy as hereinafter mentioned, and ever since said date until the said company was taken over by the defendant herein, as hereinafter alleged, was authorized to do business within the State of Idaho.

## III.

That on or about the 25th day of February, 1926, Continental Life Insurance Company, St. Louis, Missouri, in consideration of the application of one John D. Bowman, and the payment of a premium of \$87.58, issued and delivered to said John D. Bowman, its policy of insurance number 80,480, to which was attached a supplemental contract forming a part of said policy, providing for double indemnity benefits for accidental death, and thereby insured the life of the said John D. Bowman in the sum of \$2,500.00, and agreed to pay Bertha E. Bowman, wife of the said John D. Bowman, the beneficiary therein named, the sum of \$5,000.00, being double the face amount of said policy, in the event of accidental death of the said John D. Bowman as defined

in said supplemental contract and payable as therein provided, which said policy, supplemental contract for double indemnity for accidental death, supplemental contract for major surgical operations and dismemberment benefits and application of said insured, all forming a part of said policy are in words and figures as follows :

NUMBER  
80480  
CONTINENTAL  
LIFE  
INSURANCE  
COMPANY  
ST. LOUIS, MISSOURI

Business Policy  
Ordinary Life Policy  
Premiums Payable for Life  
Non-Participating with Privilege of Ex-  
changing for a Profit-Sharing Policy  
at the end of Twenty Years.  
Life Income and Waiver of Premiums in Event  
of Total and Permanent Disability.

\$2500

Insurance on the life of  
JOHN D. BOWMAN  
Annual Premium, \$87.58  
Date February 25, 1926

REGISTER OF CHANGE OF BENEFICIARY

Note—No change or designation shall take effect until endorsed on this policy by the Company at the Home Office

Date Endorsed	Beneficiary	Endorsed by

UNITED STATES OF AMERICA  
 CONTINENTAL  
 LIFE  
 INSURANCE COMPANY  
 St. Louis, Missouri.

NUMBER  
 80480

AGE  
 45

Agrees to Pay  
 Two Thousand Five Hundred Dollars

which is the face amount of this policy  
 to Bertha E. Bowman, Wife  
 immediately upon receipt of due proof of the death  
 of John D. Bowman the Insured.

PRIVILEGE OF EXCHANGING FOR A PROFIT-  
 SHARING POLICY AT THE END OF  
 TWENTY YEARS

This policy is issued on the non-participating plan, but the Company agrees to exchange it, without cost, for a Profit Sharing Annual Dividend Ordinary Life Policy for the face amount hereof at the end of twenty years from the date hereof, if all premiums shall have been duly paid. The new policy will contain the same benefits as this policy and will be subject to the continued payment of the same premium as is provided herein.

TOTAL AND PERMANENT DISABILITY  
 BENEFITS

In addition to all other benefits provided by this policy, the Company will pay for the Insured the premiums required hereon, and will pay to the Insured a life income of Twenty Five Dollars per month, commencing six months after receipt of due proof that Insured has become totally and permanently disabled, as provided on the third page hereof.

PROFIT-SHARING INSTALMENT AND TRUST  
FUND PRIVILEGES

The Insured may change the mode of payment of the proceeds of this policy from payment in one sum to payment by instalments, as provided on the fourth page; hereof; such instalments will be increased by dividends as provided on said page.

The Insured may place the proceeds of this policy in trust with the Company to secure a guaranteed annual cash income, with dividends in addition thereto, as provided on the fourth page hereof.

Business Policy; Ordinary Life Policy; Premiums Payable for Life. Non-participating, with Privilege of Exchanging for a Profit-Sharing Policy at the End of Twenty Years; Life Income and Waiver of Premiums in Event of Total and Permanent Disability:

PREMIUM PAYMENTS

Grace in Premium Payments. A grace of thirty-one days, without interest charge, will be allowed in the payment of any premium after the first year, during which time this policy will continue in force.

Facility in Paying Premiums. Premiums are payable annually, in advance, but may be changed to semi-annual or quarterly payments in accordance with the Company's table of rates applicable hereto; and the Company will allow a change from one to another of such modes of payment upon the Insured's written request therefor on the Company's form.

All premiums shall be payable either at the Home Office of the Company in Saint Louis, Missouri, or to an authorized agent of the Company upon delivery of receipt signed by the President or Secretary and countersigned by such agent. If any premium is not paid on the date when due, this policy shall cease and determine, except as herein provided.

Reinstatement. If any premium is not paid on the date when due or within the period of grace, and this policy

has not been surrendered, the Company will reinstate the policy as of said due date at any time thereafter upon evidence of insurability satisfactory to the Company, and the payment of all arrears of premiums, together with the payment or reinstatement of any indebtedness on this policy on said due date, with interest thereon at the rate of six per cent per annum.

**Automatic Premium Loans.** The Company will advance any premium becoming due hereon and remaining unpaid on the last day of grace as a loan against this policy, provided the cash value of this policy at the end of the period covered by such premium, less any indebtedness on or secured by this policy, shall be sufficient to pay such premium together with interest in advance to the end of the period covered by such premium, and provided that the Insured shall have made written request for the automatic premium loan privilege either in the application for this policy or otherwise. If the net available cash value be insufficient to advance the premium then due, the Company will continue this policy in force until such cash value is exhausted, that is, for a period which bears the same ratio to the full premium period then ensuing as the net cash value bears to the premium then due, and if prior to the expiration of such reduced period, if any, the last due premium be not paid in full, all liability of the Company on this policy shall thereupon terminate, subject to notice as hereinafter provided.

Such premium loans shall be subject to the same terms and conditions as cash loans and the automatic payment of premiums under this clause will be discontinued at any time on receipt at the Home Office of the Insured's written request therefor. While this policy is thus kept in force, the insured may, without medical examination, resume payment of premiums as provided herein.

#### NON-FORFEITURE AND LOAN VALUES

**Non Forfeiture Provisions.** After the payment of premiums for at least two full years if any subsequent premium shall not be paid when due and remains unpaid at

the end of the period of grace the insured shall then have the following

OPTIONS :

- (1) Extended Insurance, automatic. To have the insurance for the face amount hereof continued as non-participating term insurance reckoned from the due date of the unpaid premium; or
- (2) Paid-up Life Insurance. To surrender this policy for paid-up life insurance; or
- (3) Cash Value. To surrender this policy for its cash value.

If the Insured shall not within the period of grace make written request accompanied by this policy that it be endorsed for paid-up life insurance as provided in Option (2), or surrender the policy for its cash value as provided in Option (3) the insurance will be automatically continued as provided in Option (1).

The Company will allow a cash surrender value at any time on any paid-up life or paid-up term insurance.

Cash Loans. The Company will loan on the sole security of this policy, properly assigned, any sum within the cash value available at the end of the year in which the loan is made. The loan must be made before default in the payment of any premium and the Company will deduct therefrom any indebtedness hereon and any unpaid premiums for the year in which the loan is available. Interest at six per cent per annum will be payable in advance to the end of the aforesaid policy year and will thereafter be payable annually in advance. If interest is not paid when due it shall be added to the principal.

Loans will in like manner be made on the security of a paid-up life policy provided under Option (2) of non-forfeiture values for any amount up to the reserve thereon.

Failure to repay any loan or interest thereon shall not avoid the policy unless and until the total indebtedness hereon shall equal the then cash value of the policy nor



until thirty-one days after notice shall have been mailed by the Company to the last known address of the insured or any assignee of record.

Loan Insurance. The insured may cover any loan made under this policy by loan insurance on the following conditions: (1) The Insured shall furnish evidence of insurability satisfactory to the Company. (2) Loan Insurance takes effect upon delivery to the Insured of the Company's certificate therefor, and is payable upon receipt of due proof of the Insured's death. (3) The premium shall be computed at the attained age of the Insured at the time the loan insurance is made or renewed. (4) Loan insurance shall not extend beyond the next anniversary of the policy, but may under the same conditions be renewed from year to year. No loan insurance shall be made or renewed after age sixty. (5) Such loan insurance shall in the event of the death of the Insured be applied to the cancellation of the indebtedness. (6) If the loan insurance exceeds the indebtedness, the Company may cancel the excess and refund the unearned premiums.

PREMIUMS FOR EACH \$100 of LOAN  
INSURANCE

Attained Age of Insured	20-30	31-40	41-45	46-50	51-55	56-60
Annual Premium	\$0.90	\$1.00	\$1.20	\$1.40	\$1.80	\$2.60

For a period of less than one year the premium shall be at the rate of one-tenth of the annual premium for each month or fraction thereof.

Reserve. The reserve on the life insurance benefit of this policy shall be computed on the American Experience Table of Mortality with interest at the rate of three and one-half per cent per annum and the preliminary term method modified on the twenty payment life basis. Subject to such modification, the first year's insurance hereunder is term insurance, purchased by the whole or part of the first year's premium. The non-forfeiture and cash values hereon are equivalent and are equal to the said reserve less a sum in no event in excess of 2.4 per cent of



the sum insured hereunder. After the twentieth year the said values will be equal to the full reserve.

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### TABLE OF GUARANTEED VALUES

No deductions from these values will be made for a surrender charge.

As this policy is for \$2500, the cash and paid-up life insurance values hereunder are  $2\frac{1}{2}$  times the values in the table; the term of extended insurance applies to this policy without modification.

The non-forfeiture values in this table are available if premiums have been paid in full for the number of years stated, subject to any indebtedness, and will be adjusted proportionately for any semi-annual or quarterly premiums paid after the second policy year in addition to the premiums for complete policy years.

After Completion of Policy Year	Cash Value For Each \$1000 of Face Amount	Paid-Up Life Insurance For Each \$1000 of Face Amount	Term of Extended Insurance	
			Yrs.	Mos.
1st	None	None	None	
2nd	\$ 15	\$ 32	1	3
3rd	35	71	2	10
4th	55	111	4	4
5th	76	150	5	7
6th	98	188	6	9
7th	120	226	7	8
8th	142	262	8	6
9th	165	297	9	2
10th	188	331	9	8
11th	210	363	10	1
12th	233	394	10	5
13th	255	424	10	8
14th	278	453	10	10
15th	301	481	10	11
16th	324	508	11	0
17th	347	533	11	0
18th	370	558	10	11
19th	393	582	10	11
20th	416	605	10	10

Values will increase annually thereafter and an extension of this table covering later years will be furnished on application to the Home Office, if the policy does not terminate in the meantime.

#### ADDITIONAL PRIVILEGES

Change of Beneficiary. The Insured may at any time and from time to time, during the continuance of this policy, with the consent of the Company, subject to any assignment of this policy, change the beneficiary or beneficiaries hereunder by filing at the Home Office a written

request on the Company's form therefor, duly acknowledged, accompanied by this policy. Such change shall take effect only upon the endorsement of the same on this policy by the Company, whereupon all rights of the former beneficiary or beneficiaries shall cease. If any beneficiary shall die before the Insured, the interest of such beneficiary shall vest in the Insured, unless otherwise stipulated herein.

**Control of Policy.** This policy is issued with the express understanding that the Insured may, without the consent of the beneficiary, receive every benefit, exercise every right and enjoy every privilege conferred on the Insured by this policy.

**Privilege of Exchange.** This policy may be exchanged while no premium is in default or waived, for any other non-participating form of policy in use by the Company at the time this policy is issued, provided such policy shall contain no provision or benefit under which the insurance risk is greater than the risk assumed under this policy, on the following conditions:

If the premium rate per \$1,000 of insurance is not thereby diminished, the change may be made without medical examination on the payment of such an amount as may be required by the Company.

If the premium rate per \$1000 of insurance is thereby diminished, evidence of insurability satisfactory to the Company must be furnished, and adjustment shall be made of the difference between the reserves of the respective policies.

The new policy shall be written at the same age, bear the same date, and be for an amount not in excess of the face amount of this policy.

### TOTAL AND PERMANENT DISABILITY BENEFITS

The Company will pay for the insured the premiums required on this policy for every policy year, commencing with the anniversary next following the date of approval

by the Company of proof that the Insured, before attaining the age of sixty years, has become totally and permanently disabled as hereinafter defined.

The Company will also pay to the Insured a monthly income of \$10 for each \$1,000 of the face amount of this policy if the Insured shall become totally and permanently disabled as hereinafter defined, before attaining age sixty. The first payment of such income shall be made six months after receipt and approval of such proof and subsequent payments will be made monthly thereafter as long as the Insured lives and suffers such disability.

The sum payable in any settlement of this policy shall not be reduced by income payments nor by premiums waived under the above provisions and this policy will continue in full force to maturity with loan, cash and other guaranteed values increasing from year to year in like manner as if the premiums were being duly and regularly paid by the Insured. If there be any indebtedness on this policy the interest thereon will be deducted from any income payment or payments.

Total and permanent disability may be due either to bodily injury or to disease which has existed for not less than sixty days and which must occur and originate while this policy is in full force after one full year's premium has been paid.

Disability shall be deemed to be total, (a) whenever the Insured is totally disabled by bodily injury or disease so that the Insured is prevented thereby from engaging in any occupation whatsoever for remuneration or profit; or (b) if the Insured has suffered the total and irrecoverable loss of the sight of both eyes or of the use of both hands or of both feet or of one hand and one foot.

Disability shall be presumed to be permanent whenever the Insured will presumably be so totally disabled for life.

The Company may from time to time demand due proof of the continuance of such disability and the right to examine the person of the Insured, but not oftener than once a year after such disability has continued for two full years. Upon failure to furnish such proof, or if it

shall appear to the Company that the Insured is able to engage in any occupation whatsoever for remuneration or profit, income payments shall cease and the Insured shall be required to pay the premiums thereafter becoming due on this policy in accordance with the original terms hereof.

These disability benefits will not apply if the disability of the Insured shall result from self-inflicted injury or from military or naval service in time of war, nor to disability occurring while this policy is continued in accordance with any non-forfeiture option.

In the event of the total and permanent disability of the Insured, the provisions of this policy entitled "Privilege of Exchange," and any endowment option, will not be available.

The annual premium for the total and permanent disability benefits is \$6.27 and is included in the premium stated in the consideration clause of this policy.

The provisions for total and permanent disability benefits and the premium therefor may be discontinued at any time on written request of the Insured accompanied by the policy for endorsement. In any event any premiums payable after the anniversary of this policy nearest to the sixtieth anniversary of the date of birth of the Insured shall be so reduced.

### MISCELLANEOUS PROVISIONS

Incontestable After One Year, as follows: This policy is free from conditions as to residence, occupation, travel, place of death and military or naval service in time of peace or war, and shall be incontestable after one year from date of issue if the premiums are duly paid, provided, however, that the benefits for total and permanent disability and those granting additional insurance specifically against death by accident, if any, attached to or incorporated in this policy shall become void and cease to be in force for the causes and under the conditions as stated therein.

If the age of the Insured has been mis-stated the

amount payable under this policy shall be such as the premium paid would have purchased at the correct age of the insured. The Company will admit the age of the Insured when furnished with satisfactory evidence of the date of birth.

**Assignment.** Any assignment of this policy must be made in duplicate and both documents sent to the Home Office, one to be retained by the Company and the other to be returned. The Company assumes no responsibility for the validity of any assignment.

**Non-Participating.** This policy is issued on the Non-Participating plan and the cost of the insurance does not depend on the profits or surplus of the Company.

**General Provisions.** All benefits under this policy are payable at the Home Office of the Company in Saint Louis, Missouri, and proof of interest of claimant will be required. Due proof of death or application for any other benefit or settlement hereunder must be furnished to the Company at its Home Office in writing. Any indebtedness herein to the Company will be deducted from any settlement of this policy or from any cash surrender value available hereunder; the period of extended insurance and the amount of paid-up life insurance provided in Options (1) and (2) of non-forfeiture provisions will be such as the net cash surrender value, after deducting any indebtedness hereon, will purchase at the attained age of the Insured at net single premium rates according to the reserve standard named herein. In the settlement of this policy as a death claim any unpaid premium for the current policy year in which death occurs shall be considered an indebtedness hereon to the Company.

Payment of the cash value or the making of a loan, except for the purpose of paying renewal premiums hereon, may be deferred for a period of ninety days after application shall have been made therefor.

Only the President or Secretary has power in behalf of the Company to make or modify this or any contract of insurance, or to extend the time for paying any premium, and the Company shall not be bound by any promise or



representation heretofore or hereafter made unless made in writing by one of said officers.

Death by self-destruction, while sane or insane, within one year from date hereof, shall limit the amount payable by the Company to the total premiums paid on this policy.

Entire Contract. This policy and the application therefor, copy of which is attached hereto, constitute the entire contract. All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall avoid the policy unless it is contained in the written application herefor.

CONSIDERATION

This insurance is granted in consideration of the application herefor, which is made a part hereof, and of the payment in advance of Eighty-Seven and 58/100 Dollars being the premium for the term ending on the 25 day of February 1927, which is term insurance and for the legal reserve, if any. The insurance will be continued thereafter upon the payment of the.....annual premium of Eighty-Seven and 58/100 Dollars on before the 25th day of February in every year during the continuance of this policy.

After delivery of this policy to the Insured, it takes effect as of the date stated below.

IN WITNESS WHEREOF, the CONTINENTAL LIFE INSURANCE COMPANY has caused this policy to be signed by its proper officers at Saint Louis, Missouri, this 25 day of February, 1926.

J. DeWITT WILLS	EDMUND P. NELSON
Secretary	President
Countersigned	Examined
(SEAL)	Assistant Secretary

INSTALMENT AND TRUST FUND PRIVILEGES

The Insured may direct in writing that settlement of the proceeds of this policy shall be made by payment in instalments in accordance with any of the following options

instead of by immediate payment in one sum at maturity, if the policy is not assigned. The beneficiary can neither assign nor commute unpaid instalments unless such right is given by the Insured to the beneficiary. If the beneficiary should die before the total specified number of instalments certain shall have been paid and if there be no contingent beneficiary designated by the Insured or by the beneficiary after the death of the Insured, the remainder of these instalments will be commuted at the rate of three and one-half per cent per annum and paid in one sum to the beneficiary's estate, unless otherwise directed by the Insured.

The beneficiary upon the death of the Insured, provided the Insured has not otherwise directed, or the Insured upon surrender for the cash value may direct settlement of the whole or any part of the proceeds of this policy in accordance with any one of the following benefits:

Annual, Semi-annual or Quarterly Instalments computed at the rate of three and one-half per cent per annum compound interest, will be paid upon request, in lieu of monthly instalments.

Selection of any of the aforesaid methods of settlement of the proceeds of the policy shall take effect only when endorsed on this policy by the Company. After endorsement the policy will be returned to the Insured.

Payment of the first instalment shall be made immediately upon receipt of due proof of the death of the Insured, and subsequent instalments shall be paid annually, semi-annually, quarterly or monthly thereafter as may have been directed.

In no event shall any option be available if the amount of each instalment payable thereunder is less than Ten Dollars.

The following tables are based upon a policy of \$1,000 and will apply pro rata to the amount payable under this policy.



MONTHLY INSTALMENTS FOR DEFINITE  
NUMBER OF YEARS

Number of years During which Monthly Instalments are paid	1	2	3	4	5	6	
Amount of Monthly Instalments per \$1000 of Proceeds	\$84.75	\$43.10	\$29.24	\$22.26	\$18.18	\$15.34	
Number of years During which Monthly Instalments are paid	7	8	9	10	11	12	
Amount of Monthly Instalments per \$1000 of Proceeds	\$13.39	\$11.91	\$10.79	\$9.87	\$9.09	\$8.47	
Number of years During which Monthly Instalments are paid	13	14	15	16	17	18	19
Amount of Monthly Instalments per \$1000 of Proceeds	\$7.94	\$7.49	\$7.13	\$6.77	\$6.46	\$6.20	\$5.97
Number of years During which Monthly Instalments are paid	20	21	22	23	24	25	
Amount of Monthly Instalments per \$1000 of Proceeds	\$5.78	\$5.57	\$5.40	\$5.24	\$5.10	\$4.96	

ILLUSTRATION: If payment is to be made by monthly instalments for twenty years, the amount of each installment will be \$5.78 for each \$1,000 of proceeds.

CONTINUOUS MONTHLY INSTALMENTS FOR  
DEFINITE NUMBER OF YEARS AND THERE-  
AFTER DURING BENEFICIARY'S LIFETIME

Definite Number of Years Specified	AGE OF BENEFICIARY AT MATURITY OF POLICY								
	15 and Under	16	17	18	19	20	21	22	23
5 years	\$4.00	\$4.02	\$4.03	\$4.05	\$4.07	\$4.09	\$4.11	\$4.13	\$4.15
10 years	\$3.95	\$3.96	\$3.98	\$4.00	\$4.02	\$4.04	\$4.06	\$4.08	\$4.10
15 years	\$3.88	\$3.89	\$3.91	\$3.92	\$3.94	\$3.95	\$3.97	\$3.99	\$4.01
20 years	\$3.80	\$3.82	\$3.84	\$3.86	\$3.88	\$3.90	\$3.92	\$3.94	\$3.96
	24	25	26	27	28	29	30	31	32
5 years	\$4.17	\$4.20	\$4.22	\$4.25	\$4.28	\$4.30	\$4.33	\$4.37	\$4.42
10 years	\$4.12	\$4.14	\$4.17	\$4.19	\$4.22	\$4.25	\$4.28	\$4.31	\$4.34
15 years	\$4.03	\$4.05	\$4.08	\$4.10	\$4.13	\$4.16	\$4.20	\$4.24	\$4.28
20 years	\$3.98	\$4.00	\$4.02	\$4.04	\$4.06	\$4.09	\$4.12	\$4.15	\$4.18
	33	34	35	36	37	38	39	40	41
5 years	\$4.46	\$4.51	\$4.56	\$4.62	\$4.68	\$4.74	\$4.80	\$4.87	\$4.95
10 years	\$4.38	\$4.43	\$4.49	\$4.55	\$4.61	\$4.66	\$4.72	\$4.79	\$4.86
15 years	\$4.32	\$4.37	\$4.41	\$4.46	\$4.51	\$4.56	\$4.61	\$4.67	\$4.73
20 years	\$4.22	\$4.26	\$4.30	\$4.34	\$4.38	\$4.42	\$4.47	\$4.52	\$4.57
	42	43	44	45	46	47	48	49	50
5 years	\$5.02	\$5.11	\$5.19	\$5.29	\$5.38	\$5.49	\$5.60	\$5.72	\$5.85
10 years	\$4.93	\$5.01	\$5.09	\$5.18	\$5.27	\$5.37	\$5.47	\$5.57	\$5.67
15 years	\$4.79	\$4.86	\$4.93	\$5.00	\$5.08	\$5.16	\$5.24	\$5.32	\$5.40
20 years	\$4.62	\$4.68	\$4.73	\$4.78	\$4.84	\$4.90	\$4.96	\$5.01	\$5.07
	51	52	53	54	55	56	57	58	59
5 years	\$5.98	\$6.13	\$6.29	\$6.45	\$6.62	\$6.80	\$7.00	\$7.21	\$7.43
10 years	\$5.79	\$5.91	\$6.04	\$6.17	\$6.30	\$6.45	\$6.60	\$6.75	\$6.91
15 years	\$5.49	\$5.57	\$5.66	\$5.75	\$5.85	\$5.95	\$6.04	\$6.13	\$6.22
20 years	\$5.13	\$5.19	\$5.25	\$5.30	\$5.35	\$5.40	\$5.44	\$5.49	\$5.53

	60	61	62	63	64	65	66	67	68
5 years	\$7.66	\$7.90	\$8.16	\$8.44	\$8.73	\$9.04	\$9.36	\$9.69	10.05
10 years	\$7.07	\$7.24	\$7.41	\$7.58	\$7.75	\$7.92	\$8.09	\$8.26	\$8.42
15 years	\$6.31	\$6.39	\$6.47	\$6.55	\$6.63	\$6.70	\$6.77	\$6.83	\$6.88
20 years	\$5.56	\$5.59	\$5.62	\$5.65	\$5.67	\$5.69	\$5.71	\$5.72	\$5.73
	69	70	71	72 and Over					
5 years	\$10.42	\$10.80	\$11.19	\$11.59					
10 years	\$ 8.58	\$ 8.74	\$ 8.90	\$ 9.06					
15 years	\$ 6.93	\$ 6.97	\$ 7.01	\$ 7.04					
20 years	\$ 5.74	\$ 5.75	\$ 5.75	\$ 5.75					

ILLUSTRATION: If at the death of the Insured the beneficiary should be thirty years of age last birthday, the amount of each monthly instalment will be \$4.12 payable thereafter for a period of twenty years and as long thereafter as the beneficiary shall live.

### TRUST FUND PRIVILEGE

The whole or a part of the proceeds of this policy, but not less than \$1,000, may be placed in trust with the Company during a specified period or until the death of the beneficiary. The Company will pay a guaranteed income thereon at the rate of three and one-half per cent per annum. The first payment of income shall be made one year after maturity of this policy and subsequent payments annually thereafter. Upon the termination of the trust, the amount thus placed in trust shall be paid to the beneficiary or to the beneficiary's estate unless otherwise directed by the Insured.

### DIVIDENDS UNDER INSTALMENT AND TRUST FUND PRIVILEGES

Each instalment and each payment of interest will be increased by such dividends from the interest earnings as may be apportioned by the Company.

CONTINENTAL LIFE INSURANCE COMPANY  
ST. LOUIS, MISSOURI

Supplemental Contract attached to and forming a part of the Company's Policy No. 80480 on the life of John D. Bowman the Insured. Face Amount of Policy \$2,500.

DOUBLE INDEMNITY BENEFITS FOR  
ACCIDENTAL DEATH

The Company agrees to pay Five Thousand Dollars which is double the face amount of the aforesaid policy and in lieu thereof, to the beneficiary named therein, in event of the accidental death of the Insured as hereinafter defined.

The additional sum payable in event of the accidental death of the Insured shall be due if the Company shall receive due proof that such death occurred during the premium paying period before default in the payment of any premium, before the allowance of any total and permanent disability benefit, and prior to attaining the age of sixty years, and that such death resulted directly and independently of all other causes from bodily injuries, effected solely through external, violent and accidental means, and occurred within ninety days from the date of the accident, except that this double indemnity benefit shall not be payable if the Insured's death shall result directly or indirectly, wholly or partly from suicide, whether sane or insane, from poisoning, infection or any kind of illness or disease, or from bodily injuries received while engaged in military or naval service or from participating in aeronautics or submarine operations.

The annual premium for this double indemnity benefit is \$3.75 and is included in the premium stated in the consideration clause of the policy.

The provisions for double indemnity benefits and the premiums therefor may be discontinued at any time on written request of the Insured accompanied by the policy for endorsement. In any event any premiums payable after the anniversary of this policy nearest to the sixtieth

anniversary of the date of birth of the Insured shall be so reduced.

IN WITNESS WHEREOF the Continental Life Insurance Company has caused this Supplemental Contract to be signed by its proper officers at Saint Louis, Missouri, this 25 day of February 1926.

J. DeWITT WILLS	EDMUND P. NELSON
Secretary.	President
Countersigned:	Examined
Assistant Secretary.	

(Seal)

CONTINENTAL LIFE INSURANCE COMPANY  
ST. LOUIS, MISSOURI

Supplemental Contract attached to and forming a part of the Company's Policy No. 80480 on the life of John D. Bowman, the Insured. Face Amount of Policy \$2,500.

MAJOR SURGICAL OPERATIONS AND  
DISMEMBERMENT BENEFITS

The Company will pay for major surgical operations an amount not exceeding Fifty Dollars for each \$1,000 face amount hereof, provided the Company shall receive due proof that the Insured within the premium paying period, before default in the payment of any premium, prior to attaining age 60 and prior to becoming totally and permanently disabled has by reason of bodily injuries or disease contracted after the date hereof and after the payment of two full years' premiums on this policy, undergone a major surgical operation as herein defined which shall not result in death or total and permanent disability within ninety days from the date of such operation. The amount claimed by the Insured under the surgical operation benefit shall not exceed the actual cost of surgical and hospital fees. If the amount is less than the maximum benefit, the balance of that amount will be available to apply on future operations. Only such major

surgical operations as are performed in a hospital in the United States or Canada and which require complete and general anaesthesia, shall be regarded as within the meaning of this provision. Tonsillectomy shall not be considered a major surgical operation within the meaning of this provision.

The Company will pay benefits for dismemberments, subject to the conditions set forth below, in the amounts stated in the following schedule :

	Benefit for each \$1000 face amount hereof
Loss of right arm above the elbow.....	\$250.00
Loss of right arm below the elbow.....	150.00
Loss of left arm above the elbow.....	150.00
Loss of left arm below the elbow.....	100.00
Loss of either leg above the knee.....	250.00
Loss of either leg below the knee.....	125.00
Loss of entire sight of either eye.....	100.00

The foregoing benefits are payable provided the Company shall receive due proof that the Insured within the premium paying period, before default in the payment of any premium, prior to attaining age 60 and prior to becoming totally and permanently disabled has, by reason of bodily injury or disease contracted after the date hereof and after the payment of one full year's premium on this policy, sustained a loss as herein defined, which shall not result in death or total and permanent disability within ninety days from the date of such loss.

The surgical operations benefit shall not be available for any surgical or hospital fees incurred in connection with a claim for dismemberment for which a specified amount of benefit is herein provided. The Company shall be liable for payment of only one of the dismemberment benefits herein mentioned.

Major surgical operations and dismemberments benefits shall in no event be payable in excess of the amount applicable to a policy for \$10,000, regardless of the number and amount of policies in force containing this benefit.



The annual premium for the major surgical operations and dismemberments benefits is \$3.13 and is included in the premium stated in the consideration clause of the policy.

The provisions for major surgical operations and dismemberments benefits and the premium therefore may be discontinued at any time on written request of the Insured accompanied by the policy for endorsement. Any premium paid for any period not covered will be returned to the Insured.

IN WITNESS WHEREOF the Continental Life Insurance Company has caused this Supplemental Contract to be signed by its proper officers at Saint Louis, Missouri, this 25 day of February 1926.

P. Marks  
Secretary.

E. J. Maus  
President  
Examined

Countersigned:  
Assistant Secretary

(Seal)

TO CONTINENTAL LIFE INSURANCE COMPANY,  
ST. LOUIS, MISSOURI

1. I, John D. Bowman hereby apply for a policy on my  
(Write full name)  
life for \$2500.00 on the Bus. Policy and Life Plan,  
(For Income Policies, state amount of income)  
Non-Participating, Rate C with Double Indemnity  
(A,B,C. or D)  
for Accidental Death, with Major Surgical operations and dismemberments benefits, premiums payable ann annually first year ann annually thereafter.
2. I was born at Heber City, Ut. on the 25 day of December 1880. My age nearest birthday is 45 years.

3. My residence is (No.R.F.D. #3 Blackfoot  
 (Street or R.D.F. Town  
 (  
 (Bingham Idaho  
 ( County State  
 (  
 (six miles in Northeast  
 (direction from Blackfoot  
 (  
 (Send premium  
 (notices to  
 (.....  
 ( (Insert "Residence"  
 ( or "Business")
4. I have resided at present address 4 years and for  
 three years prior at Heber City, Utah  
 (City, State, Street and Number)
5. My place of Business is No. Blackfoot, Bingham,  
 Idaho  
 Street City or Town County State
6. My occupation is Mgr. of my own farm & Leased  
 farm.  
 (State exact duties in detail)
7. The name and address of my employer is Myself
8. Make policy payable to Bertha E. Bowman  
 (Write full name)  
 Relationship Wife  
 whose age is.....(born on the.....day of.....1.....)  
 (Fillout for Continuous income Policies only)
9. I .....do..... make application for the Automatic Pre-  
 mium Loan Privilege.  
 (Insert the words "do not" if this privilege is not  
 desired. The above statement is of no effect if ap-  
 plication be for term insurance.)
10. I hereby request Please issue 2500 additional



(This space is for Special Requests, such as Preliminary Insurance, Issuance of Separate Policies, etc.)

- 11. The amount of insurance now in force on my life is, Life, \$1000 Disability, \$....., D. I., \$..... of which \$..... has been issued within the last three years by the following Companies.....C.L.I.C.
- 12. I do not have any application pending in any other company except ..... (If there is not an application pending erase the word "except" but if an application is pending give name of company and amount.)
- 13. I have never been declined nor postponed for insurance, nor offered a policy different from that which I made application except..... (If there is not an exception erase the word "except" but if there is exception give name of company and amount)
- 14. My acceptance of any policy issued on this application will, without further notice, constitute a ratification by me of any correction in or addition to this application made by the Company in the space provided for "Home Office Endorsements Only."

<p>FOR HOME OFFICE ENDORSEMENTS ONLY</p> <p>Statement No. ....</p> <p>corrected to read as follows;</p>
---

- 15. I have paid to the agent taking this application, cash \$87.58 being the first.....annual premium on policy applied for.
- 16. I agree on behalf of myself and any person or persons, firm or corporation, who may have claim or any interest in any insurance issued on this application as follows:

(1) If the first premium is paid in cash at the time this application is made and this application is thereafter



THE APPLICANT MUST BE EXAMINED IN PRIVATE. THE EXAMINER MUST MAIL THE COMPLETED EXAMINATION TO CONTINENTAL LIFE INSURANCE COMPANY, ST. LOUIS, MO.

1. a. Full Name JOHN D. BOWMAN  
b. Age (last birthday) 45  
c. Race? White
2. Has any life insurance organization ever declined or failed to issue a policy on your life or offered one different than applied for? No Names of companies, dates and details? -----
3. a. What are your present occupations? (Explain exact duties)  
b. What were your former occupations? a. Farming  
c. Have you changed occupation or residence to improve your health? b. Same  
c. No  
d. Do you contemplate a change of either? d. No

4. a. Family Record	Age if Living	Health (Good or Bad) If not good, give full details	Age at Death	Cause of Death	How Long Ill
Husband or Wife	43	Good			
Father			46	Accdl.	1
Mother			52	Pneum.	10 da
Brothers (Living 3 (Dead 3)	55	Good	1 yr	not known	
	42	Good	2 yr	not known	
	40	Good	47	not known	2 da
Sisters (Living 2 (Dead 0)	47	Good			
	38	Good			

- b. Age attained by Father's Father? 75 Mother? Not Known Mother's Father? 65 Mother's Mother? 85  
 c. Have any of your family or relatives had tuberculosis or been insane? No

5. Have you ever had any disease or impairment of	Yes or No	Disease	Date	Duration	Results
a. Brain or nervous system?	No				
b. Heart?	No				
c. Lungs?	No				
d. Stomach, bowels, abdomen	Yes	Appendicitis	1905	8 days	Operated Good Recovery
e. Kidneys or bladder	No				
f. Eyes or ears?	No				
g. Any other disease or injury?	No				

6. a. Do you contemplate undergoing a surgical operation? a. No
- b. Have you ever raised or spat blood, b. No.
- c. Ever had syphilis? c. No
- d. Have you gained or lost weight in the past year. (State amount and cause) d. No
- e. Have you ever been on a restricted diet of any kind? e. No
- f. Has your urine ever contained sugar or albumen or casts? (Give details.) f. No
- g. Has your blood pressure ever been found to be above normal? g. No
- h. Have you ever applied for Government Compensation for War Disability? For what injuries? h. No
7. a. To what extent if any do you use alcoholic drinks? (Give daily or other average.) a. None
- b. Have you ever taken treatment for any drug or liquor habit? b. No
8. Are you now in good health? if not, state cause of ill health. Yes

I certify the above answers are full, correct and true, and agree that all of the above shall constitute Part II of my application.

I expressly waive, on behalf of myself and of any person who shall have or claim any interest in any policy issued hereunder all provisions of law forbidding any physician or other person who has attended or examined me,

or who may hereafter attend or examine me, from disclosing any knowledge or information which he thereby acquired.

Dated at Blackfoot, State of Idaho, this 13 day of February 1926.

Witness:

W. W. BECK  
M.D.

Signature( JOHN D. BOWMAN  
of (To be written in presence  
Applicant( of Medical Examiner)

IV.

That the said original policy, supplemental contracts and application, of which the above is a copy, are in the possession of the defendant herein, having been delivered by the plaintiff to said defendant at its instance and request upon submission of proof of death of said insured, John D. Bowman.

V.

That on or about the 16th day of February, 1937, the said John D. Bowman died at Blackfoot, Bingham County, Idaho, before the allowance of any total or permanent disability benefits and prior to his attaining the age of 60 years; and that the death of the said John D. Bowman resulted directly and independently of all other causes from bodily injuries effected solely through external, violent and accidental means, to-wit: By the accidental discharge of a shot gun, which struck the person and body of the said John D. Bowman; and that the death of the said John D. Bowman occurred within 90 days

from date of said accident and while said policy was in full force and effect.

VI.

That the plaintiff was the wife of said John D. Bowman at the time said policy was issued to him and so remained at the time of his said death and is the beneficiary named in said policy.

VII.

That up to the time of the death of the said John D. Bowman all premiums on said policy, including the premium for double indemnity benefits for accidental death as provided in said policy and supplemental contract, forming a part of said policy, were paid, and that in all other respects the said John D. Bowman duly performed all agreements and conditions of said policy on his part.

VIII.

That under and by virtue of the proceedings had in the Circuit Court of the City of St. Louis in the State of Missouri at the April term 1934, and proceedings had in said court subsequently thereto in the matter of R. Emmet O'Malley, Superintendent of the Insurance Department of the State of Missouri vs. Continental Life Insurance Company, a corporation, the said defendant, Kansas City Life Insurance Company, a corporation, took over under order of and by virtue of order of sale by the court the possession and title to all of the assets of the said Continental Life Insurance Company, including the policy of insurance hereinabove



mentioned and assumed liability on said policy of insurance; that in said court proceeding and by virtue of the power vested in the said plaintiff in said action, R. Emmet O'Malley, Superintendent of Insurance Department of the State of Missouri in charge of Continental Life Insurance Company, the said Superintendent of the Insurance Department of the State of Missouri, under order of the court, did sell and transfer to the plaintiff herein all of the assets of the said Continental Life Insurance Company, including the policy of insurance hereinabove referred to and by the terms of said sale and transfer of the assets of said company to the defendant herein the said defendant assumed the obligation of the said Continental Life Insurance Company and the obligations of said policy of insurance, and that said sale and assignment were duly ratified by decree of said court and which proceedings are duly recorded as instrument No. 189750 in Book 10 of Miscellaneous Records at page 195 of the records of Bannock County, Idaho, to which reference is hereby made for further particulars.

#### IX.

That after the death of the said John D. Bowman plaintiff furnished to the defendant due proof of the accidental death of said assured, and that the said defendant at the time it received said proof demanded of and received from the plaintiff said policy, which policy the defendant retains and still has in its possession.



X.

That no part of said sum has been paid by the defendant, although payment thereof has been demanded by this plaintiff, and that there is now due and owing from the defendant to the plaintiff upon said policy the sum of \$5,000.00 with interest from the 16th day of February, 1937, at the rate of 6% per annum, together with costs of suit.

WHEREFORE, PLAINTIFF DEMANDS JUDGMENT against the defendant for the sum of \$5,000.00, together with interest thereon at the rate of 6% per annum from the 16th day of February, 1937, and for costs of suit herein incurred.

Jones, Pomeroy & Jones,  
Attorneys for the Plaintiff,  
Residence and P. O. Address:  
Pocatello, Idaho

(Duly verified)

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(Title of Court and Cause)

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ORDER OF REMOVAL

Filed in the State Court, December 2, 1937.

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The defendant, Kansas City Life Insurance Company, a corporation, having filed its petition in due time and form for the removal of this cause to the District Court

of the United States for the District of Idaho, and having at the same time offered its bond in the sum of \$500.00 with good and sufficient surety conditioned according to law;

NOW, THEREFORE, this court does hereby accept and approve said bond and accepts said petition and does order that this cause be removed for trial to the District Court of the United States for the District of Idaho, and the Clerk of this court is hereby directed to prepare and certify a transcript of the record herein to be entered in the said United States District Court, and that no further proceedings be had herein in this case in this court.

Done in open court this 2nd day of December, 1937.

J. L. DOWNING,  
Judge.

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IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF IDAHO,  
EASTERN DIVISION,

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BERTHA E. BOWMAN,

Plaintiff,

vs.

KANSAS CITY LIFE INSURANCE COMPANY,  
A Corporation,

Defendant.

No. 1032

ANSWER

Filed February 25, 1938.

For answer to plaintiff's complaint defendant :

I.

Admits paragraph I of said complaint.

II.

Admits paragraph II of said complaint.

III.

Admits paragraph III of said complaint.

IV.

Admits paragraph IV of said complaint.

V.

Denies all of the allegations of paragraph V of said complaint except that defendant admits that on or about the 16th day of February, 1937, the said John D. Bowman died at Blackfoot, Bingham County, Idaho, before the allowance of any total or permanent disability benefits and prior to his attaining the age of 60 years and admits that the said policy was in full force and effect at the time of plaintiff's death ;

Further answering said paragraph V of plaintiff's complaint defendant alleges that said insurance policy referred to in plaintiff's complaint provides among other things that double indemnity benefit shall not be payable if the Insured's death shall result directly or indirectly, wholly or partly from suicide, and defendant alleges that Insured's death resulted from suicide.

## IX.

Denies each and every allegation of paragraph IX of said complaint except that it admits that defendant retains and still has in its possession the policy therein referred to.

## X.

Denies each and every allegation of paragraph X of said complaint except that it admits that no part of said sum alleged as due and owing has been paid, and alleges that there is nothing due and owing from the defendant to the plaintiff upon said policy except the sum of \$2,500.00 which said sum was before the commencement of this action tendered by defendant to plaintiff, same being the full amount to which plaintiff was entitled, which said sum defendant, coincident with the filing of this answer deposits in court for the plaintiff.

WHEREFORE, Defendant prays that plaintiff take nothing in excess of judgment for the amount tendered into court and here offers to allow judgment to take judgment against it for said amount, to-wit, \$2,500.00, and that defendant have its costs.

Dan B. Shields,  
Residence: Salt Lake City,  
Utah.

F. M. Bistline,  
Residence: Pocatello, Idaho.

Attorneys for Defendant.

(Duly verified)

(Service accepted February 23, 1938)

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(Title of Court and Cause)

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MINUTES OF THE COURT OF MARCH 25, 1938

This cause came on for trial before the Court and jury, Jones, Pomeroy & Jones, Esquires, appearing for the plaintiff, and F. M. Bistline and Dan B. Shields, Esquires, appearing as counsel for the defendant.

The Clerk, under directions of the Court, proceeded to draw from the jury box the names of twelve persons, one at a time, written on separate slips of paper to secure a jury. G. M. Parish, whose name was so drawn was excused for cause; S. R. Rostad, Ronald Lundstrom and Frank Siddoway, whose names were likewise drawn were excused on the plaintiff's peremptory challenge and Floyd Bradbury, J. P. Sorensen and Wm. P. Camp, Jr., whose names were also drawn, were excused on the defendant's peremptory challenge.

Following are the names of the persons whose names were drawn from the jury box, who were sworn and examined on voir dire, found duly qualified, and who were

sworn to well and truly try said cause and a true verdict render, to-wit :

Ronald Clark	Wilkie Noble
Chas. Briggs	Thomas H. Barnes
Hugo L. Clark	J. H. Sommercorn
R. C. Pettingill	Charles Shumway
Hugo Elg	Ronald H. Miller
A. B. Brough	James Peterson

After a statement of the plaintiff's case by her counsel, Verna A. Bowman, Bert Bowman, Rose L. Barris, Melvin Bowman, Brigham Harrocks, John N. Barnard, John C. Sanberg, E. C. Peck, Byron Jackman, J. D. Gibbs, L. C. Adams and Bertha E. Bowman were sworn and examined as witnesses and other evidence was introduced on the part of the plaintiff.

After admonishing the jury, the Court excused them to ten o'clock A. M. on March 26th, 1938, and continued the trial to that time.

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(Title of Court and Cause)

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#### MINUTES OF THE COURT OF MARCH 26, 1938

The trial of this cause was resumed before the Court and jury. Counsel for the respective parties being present, it was agreed that the members of the jury were all present.

Dr. H. E. Miller was sworn and examined and Melvin

Bowman was recalled and further examined as witnesses on the part of the plaintiff, and here the plaintiff rests.

Counsel for the defendant moved the Court for a judgment of non suit upon the question of double indemnity. The motion was submitted without argument and was by the Court denied. The defendant asked and was granted exceptions.

The defendant's counsel made a statement of the defense to the jury, whereupon Howard Packham, Ira Corey and Dr. A. N. Newton were sworn and examined as witnesses and other evidence was introduced on the part of the defendant and here both sides close.

The defendant's counsel renewed the motion for a judgment of non-suit upon the question of double indemnity. The motion was denied by the Court. The defendant asked and was granted exceptions to the order.

The cause was argued before the jury by counsel for the respective parties, after which the Court instructed the jury, and placed them in charge of a bailiff duly sworn, and they retired to consider of their verdict.

On the same day the jury returned into court, counsel for the respective parties being present, the jury presented their written verdict, which was in the words following:

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(Title of Court and Cause)

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VERDICT

“We, the Jury in the above entitled cause, find for



the plaintiff and assess her damages against the defendant in the sum of \$5,000.00.

Chas. Briggs,  
Foreman.”

The verdict was recorded in the presence of the jury and then read to them, and they each confirmed the same.

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(Title of Court and Cause)

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VERDICT

Filed March 26, 1938.

We, the Jury in the above entitled cause, find for the plaintiff and assess her damages against the defendant in the sum of \$5,000.00.

CHAS. BRIGGS,  
Foreman.

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(Title of Court and Cause)

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JUDGMENT

Filed March 26, 1938.

This action came on regularly for trial, said parties appearing by their attorneys. A jury of twelve persons was regularly empaneled and sworn to try said action and witnesses on the part of the plaintiff and defendant were sworn and examined. After hearing evidence,

the argument of counsel and instructions of the Court, the jury retired to consider of their verdict, and subsequently returned into court, and being called, answered to their names and presented their written verdict, as follows:

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(Title of Court and Cause)

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Verdict

“We, the Jury in the above entitled cause find for the plaintiff and assess her damages against the defendant in the sum of \$5,000.00.

Chas. Briggs,  
Foreman.”

WHEREFORE, By virtue of the law, and by reason of the premises aforesaid, it is ordered and adjudged that said plaintiff have and recover from said defendant the sum of Five Thousand Dollars (\$5,000.00), with interest thereon from the date hereof until paid, together with said plaintiff’s costs and disbursements incurred in this action, amounting to the sum of \$144.20.

WITNESS The Honorable Charles C. Cavanah, Judge of said court, and the seal thereof this 26th day of March, 1938.

(SEAL)

W. D. McREYNOLDS,  
Clerk.

(Title of Court and Cause)

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MINUTES OF THE COURT OF JUNE 15, 1938

The defendant's motion for a new trial was presented to the Court and argued by F. M. Bistline, Esquire, on the part of the defendant and by T. D. Jones, Esquire, on the part of the plaintiff. At the conclusion of the argument, the Court announced his conclusions and ordered that the motion for a new trial be, and the same hereby is denied. The defendant asked and was granted exceptions to the order.

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(Title of Court and Cause)

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BILL OF EXCEPTIONS.

Lodged August 13, 1938.

Filed August 29, 1938.

Be it remembered that the above entitled cause come on for trial on March 25, 1938, being one of the days of the March Term of said Court, before C. C. Cavanah, Judge of said court, and a jury duly impaneled. Jones, Pomeroy & Jones, Pocatello, Idaho, attorneys for plaintiff; and Dan B. Shields, Salt Lake City, and F. M. Bistline, Pocatello, Idaho, attorneys for defendant.

A jury first having been empaneled and sworn according to law and counsel for plaintiff having made their opening statement, the following testimony of wit-

nesses was offered by the plaintiff to maintain her complaint.

VERNA A. BOWMAN, a witness called on behalf of plaintiff being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JONES:

My name is Verna Bowman. I live in the house back of the sugar factory at Blackfoot. I was living there on the date John D. Bowman met his death. This house is about 200 or 250 feet from the barn where Mr. John Bowman met his death. It is north or northwest from the barn. There was a chicken coop about 150 feet from the barn between my house and the barn,—maybe 100 feet from my house to the chicken coop and 150 feet from the chicken coop to the barn. My husband made some measurements by stepping it off. I didn't make any measurements myself. I have been living there about one year. Prior to and at the time of John D. Bowman's death there were birds all over the place. There was a granary by our place and there were holes in the granary where the birds could get in.

I know where the door is that leads into the barn where Mr. Bowman was found dead. It is on the north side of the barn. I saw Mr. Bowman the first time on the date of his death when he was helping one of the boys load hay. The second time I saw him was when he came to my house for the gun about one-thirty and got the gun. He worked the mechanism of it, I guess you would call it. I said there is no shells and he picked up the gun and

walked out. I followed him to the door, and as he opened the door the birds flew out of the tree and he said "birds." He appeared as he always did. He came to the house and asked me for something. I thought he wanted his pipe wrench. He talked to the children and tapped or touched them on the heads. His appearance was cheerful. He smiled all the time. As he left with the gun, he said "birds" and motioned to the birds which were flying around from the trees, with the gun. I didn't notice where he went.

I next saw him that day about 3:30 going toward the barn. He wasn't far from the barn when I saw him, but I can't say how far it was. I went into the coop and raked up the straw, and while I was taking that straw out I heard a shot about five minutes from the time I saw him going towards the barn. I didn't think anything about the shot at the time. I noticed the birds there, there were so many flying around in all directions. Nothing else attracted my attention. I went on changing the straw out and putting fresh straw in there, and then I went to the house and I picked up some sewing that I had been doing before I went to the chicken coop and started sewing and I heard another shot. It was about twenty minutes later, between the first and second shot. These shots came from the direction of the barn.

#### CROSS EXAMINATION BY MR. SHIELDS:

Mr. Bowman had been ill for about a year before that. He had had a stroke at the beginning of the illness, but he was recovering. He had recovered all but his speech.

He did not walk with a limp; his right arm was affected; it was getting better though, but on cold days he would drop things. The day he came to me, I could not make out in the first place what he wanted. I first offered the wrench which we had borrowed but he said "No." The gun was in plain sight. He got it himself. He was at my house about a half hour. He visited with and talked with the kids, and I didn't pay any attention to what he said to them.

There are two houses to the north of the barn. I live in the south house. The other house is farther north. The barn is about 60 feet by 30 feet wide. The long way is east and west and the wide way is north and south and it is two story. The barn is to the south and east of my house, and the chicken coop is diagonally to the south between the barn and my house.

When Mr. Bowman went away from my house he carried this gun. I never noticed whether he had the gun or not when he came back. I was in the chicken coop when I saw him in the barn lot at the barn.

RE-DIRECT EXAMINATION BY MR. JONES:

There is no obstruction between the chicken coop and the barn to prevent a person from seeing from one place to the other. When I heard the shots, I never thought anything about it. I never heard of Bowman's death until the evening of the same day.

BERTRAM N. BOWMAN, a witness on behalf of plaintiff being first duly sworn, testified as follows:

## DIRECT EXAMINATION BY MR. JONES:

My name is Bertram N. Bowman. I live just west of the sugar factory. I am a son of John D. Bowman. The house where I live sets diagonally northwest of the barn about 250 feet, and the chicken coop is about 100 feet from the house, in between the house and the barn on a little of an angle.

I first saw my father on the day he died with my brother with a team and wagon back of the house about 10 or 10:30 in the morning. He got on the wagon and rode to the barn with me. I had a conversation with him at that time. He appeared just the same at that time as he had for days before. His physical condition appeared perfect; he could do practically anything that the rest of us could do.

I next saw him about one-thirty or two-thirty o'clock in the afternoon just inside the barnyard gate between my house and the barn taking the gun toward his house. Within the week prior to the time that I saw him with the gun, he would help us with the chores, and the day before he had helped us to repair a sleigh tongue, and did numerous jobs around the barnyard. He would do most everything there. In the summer of 1936 he went out with me and did some irrigating, and before that he showed me cuts to take out. He supervised all of the irrigation. He drove the derrick team and milked some of the cows. He told me less than two weeks before the accident that he would be on the farm helping us this summer and show us more how to farm.



As to his family relationship with my mother, I never knew of them to have a cross word. His right side was affected by the stroke. The condition of his right arm was different from the rest. In cold weather when he would pick things up in his right hand, he would sometimes drop them because his grip wasn't as good with the right hand. I have seen him around the cows. He would often run the cows in and he would quite often have a part of them all milked when we would come in. He had been able to milk cows the latter half of the summer preceeding his death, but when it was cold he couldn't grip the cow's teats. I saw him possibly twice a day, and practically every day from the time of the stroke up to the time of his death. It was between two and three months after sustaining the stroke that I noticed he was beginning to improve. I observed that his recovery was slow. At first his leg was a little lame, and his arm wasn't nearly as strong, but his feeling and the use of his leg came back, and it came into use more each day, and continued to get better every day up to the day of the accident.

There was an awful lot of birds around our barn, and also around the feed lot adjoining the barn. And you could never go into the loft of the barn without scaring a lot of birds out. The barn is a frame structure about 28 by 46 feet. It has a gable roof and tie arms across the rafters. It is about ten feet from the hay loft floor to the tie-arm. The barn has two windows in the west and two in the east. There is a large hay door between the east two. Those windows were between two and a

half and three feet square, and they are about four and a half feet from the floor of the loft of the barn. The windows had no glass in them. There was a canvas that was tacked down diagonally across the window which came down diagonally from the north side. There was about one-third of the window that was not covered. There were birds in the loft of this barn. There were always birds and lots of them. There were lots of birds all over at the time my father met his death; they were in the hay loft and around the granary,—lots of them. They were sparrows.

The oat granary is back of the barn on the west side,—down below this southwest window with a lean-to roof to the south, and the doors to this granary have never been very tight. You can never go in there but what a lot of birds will fly out of there. We also have a wheat granary where we stored the seed wheat, and the birds could get in there some, but not so much.

I recognize what has been marked as plaintiff's exhibit No. 1 as the gun. There has been a slight change in it since I saw it. The stock has been repaired; it was repaired by Roswell Barris; and also the gun is cleaned up a great deal since it was at my house.

My father was around five foot six in height and of stocky build. My youngest brother is about the same build and size.

#### CROSS EXAMINATION BY MR. SHIELDS:

I am the husband of Mrs. Verna Bowman who testified The gun had been at my house three or four days.

I had it on the feed lot shooting sparrows out there. I think I had it over there at the house altogether between six weeks and two months. It had not been in the possession of my father for something like five or six months before that time. I hardly think there are as many sparrows out there now as there were last winter. My father did not have a paralytic stroke; it was thrombosis. It occurred December 1, 1935.

He was prostrate in bed for six weeks, after which he slowly got well, but was somewhat lame to begin with. He had a halt in his right leg, and his right hand was numb, and at first he could not use that hand as well. There was no time after he had this illness when he actually could use this hand as well as before this sickness, and he always had to a certain extent favored that hand. He had some difficulty with his speech; articulating was difficult for him, and that was true up to the day that he died with some words, but other words he could say all right. The words he pronounced from the point of his tongue, or short sharp words, he said well, and I saw no marked difference in these words. At the time he died, he was about the same weight as he was before his illness, having regained his normal weight.

It is a twelve-gauge gun.

The gun had some repairs to it. The stock was another stock and did not have this shoulder bolt on it. It is the same gun, and has been considerably cleaned up. The trigger is just the same as it was. I will explain where the alterations were made in the gun stock. This

piece (indicating) that was off, and we had no shoulder bolt, and it was more or less a little rough in here (indicating). This piece on here in the gun (indicating) you will notice had been spliced in. We found this gun when we were coming over the Lincoln Creek Divide. A hunter had lost it, and someone had run over it and broken this off, and we put this piece in here (indicating). The tape that is around here (indicating) was on here at all times during the last year. The tape to which we are referring is immediately under the Clerk's mark. The upper part of the stock is repaired, and the lower one-half is the original.

I was not with my father every day. The contact that I had with him was just accidental meetings or occasionally, or when I went over to see my parents. I would see him about the place as I would drive back and forth; sometimes I would get through around 11:20 at noon, and he would be around the barn and I would help him take care of the chores and things. On account of my employment I am compelled to say that the contact between me and my father was not as close as it had been when I was growing up, but I was there to dinner about a month or so prior to the accident and stayed there from 11:30 to 1:00, o'clock. On the day of the accident I saw him carrying a gun through the gate into the barn yard at about 1:30 or 2:00 o'clock in the afternoon. He was headed toward the house. He was walking toward the east or toward the south. At that time I was going with a load of beet pulp to the scales to weigh it. The

scales were south between the barn and dad's house and he had to walk by there. I did not pay any attention to how father was carrying the gun. I was about twenty or thirty feet from him at that time.

Father would help with the chores. We had from twelve to sixteen horses in the corral, four cows, a couple of calves that had to be fed and watered twice a day, and the cows put in the barn and milked. On the day in question there was no hay in this loft of the barn and had not been for sometime prior thereto. To do the chores would involve putting hay in the stalls. Part of the winter it would have required somebody going up in the loft. We put a little of the third crop of hay in the hay-mow and fed the cows when we kept them in during the cold nights. I don't remember what time the last of the hay was put in there; it could have been a month, and it could have been a month and a half. I never took care of feeding the cows, but would help milk. Birds can come in and go out of the windows in the loft of the barn.

#### REDIRECT EXAMINATION BY MR. JONES:

My father used another gun from the latter part of November up to the time of his death there on the premises. He used a gun to kill a stray dog soon after the first of December in the yard there. He took one shot at this dog, which was about fifty or sixty feet away. The gun was a twenty-two single shot.

He sometimes got into the loft of the barn to feed hay to the stock. When we were harvesting the beets, he used to feed the horses practically every night for us.

ROSWELL H. BARRIS, a witness on behalf of the plaintiff, being first duly sworn, testified as follows :

DIRECT EXAMINATION BY MR. JONES :

My name is Roswell H. Barris. I then lived at Groveland three miles north and west of Blackfoot in Bingham County, Idaho for over thirty years. I am not in any way related to the Bowmans. I know that Exhibit No. 1 is a twelve-gauge Winchester repeating shot gun. I bought this gun at an auction sale at the Boyle Hardware Company on February 26, 1938, and reconditioned it. I took it apart and cleaned the works and reconditioned the stock. The works of the gun were all gummed up with hard grease, and it was corroded until I had a lot of difficulty in cleaning it out. I had to use soap and water and a brush, to clean the grease and grit from the works of the gun.

CROSS EXAMINATION BY MR. SHIELDS :

I am now the owner of this gun. I know nothing about the gun before. I had never seen it before the sale.

MELVIN BOWMAN, witness on behalf of plaintiff, having been first duly sworn, testified as follows :

DIRECT EXAMINATION BY MR. JONES :

My name is Melvin Bowman. I live at Riverside five miles out of Blackfoot. I am the son of John D. Bowman, deceased. I know my father sustained an illness in December, 1935, and I saw him nearly every day until this winter, and then maybe it would be two or three days. At first he was in bad shape; he was bad off, and then he



seemed to improve a lot and get out and around. At the time of his death his physical condition was pretty near normal, all but his speech and one arm. That was the only thing very noticeable at all. In cold weather his arm would get more numb and he would not have use of it that he would on days that were warmer.

I saw him the day before his death hitching up some colts to break them, and we broke the sleigh tongue out and we fixed it. By "we" I mean him and my brother and me. He would get the tools and help, just like any of us. I think the first thing he did was to start to heard the cows after he got out of bed. He took them to the pasture, and then he would supervise the irrigating, and in the second and third crop of hay he drove the derrick team for about two hundred tons of hay. I saw him do other things also. He helped with the threshing, and in the fall he helped by feeding the cows and the horses and repairing the machinery. He would drive a 1937 Plymouth car around the farm. He drove it practically all summer. He was greatly improved and seemed to be better in the fall of 1936 than he was in the summer. I never saw him milk, but I saw him there; I did the chores on my own place. I knew he fed the cows. I had a talk with him shortly before his death, in the spring when we were breaking the colts, as to his future plans. He told me he would help me run the place this coming summer.

The last time I saw him was about three o'clock in the afternoon on the day before the accident. A few days



before his death, I was fixing a beet drill and I changed it from a twenty to twenty-two inch row, and he knew the difference. I could tell from his appearance whether he was despondent, or cheerful, or happy, or how he was; he appeared to be happy, just like normal. I don't remember that he ever said anything to me about his condition. He was never pressed for finances because they were all right.

I am about five foot six tall. Compared with the height of my father, I don't think there was a fraction of an inch difference in the two of us, and my build was practically the same as his. I will stand up and take Exhibit No. 1. His arms were about the same length as mine.

I saw that gun in the barn lying diagonally across him in the southwest corner of the loft. There was a perpendicular ladder that went up on the north side of the barn to reach the loft.

It was around a quarter to five on that same day, in the afternoon, that I first learned of my father's death. I went to the place where he was found after I had been up to the undertaker's and sheriff's office. I went up to see the sheriff and undertaker. I found my father in the southwest corner of the barn; his feet were about one and a half feet from the wall, lying in a southeasterly direction. His feet were about one and a half feet from the west wall and a little north, about four inches, of the southwest window. His body was about one and a half feet from the wall and just three or four inches north

of the window, that is, the north portion of the window, and the gun was lying horizontally across the left leg with the butt toward his feet. I made no close inspection of my father.

Later that evening I looked around with the others for evidence of shot in the barn loft at the same time the sheriff was there or about five o'clock. I discovered where the shot had taken effect; it was two feet from the west wall and ten feet from the floor of the loft to a two by four it hit in the wall, just a little southeast from his feet; it was just over his feet and back just a little. It was just two feet from the west wall, nearly perpendicular. I didn't look closely at the point where the shot was embedded, but there was flesh and little shreds of clothing, and they were scattered about the floor of the loft. I noticed one empty shell lying on his right side, and an empty shell in the gun. I made some examination to see whether any other shots had taken effect in the barn and found no shot except the one I have described. Where the body lay, I found a two by six board around three feet long; it had not been moved because the print where it was lying was still just the same.

PLAINTIFF'S EXHIBIT NO. 1 (shotgun) was offered in evidence at this time and admitted without objection.

CROSS EXAMINATION BY MR. BISTLINE:

I heard of my father's death just as I got into Black-foot about five o'clock. I went out to the barn. I think the sheriff, coroner and I went into the barn together.

We went in the outside door of the barn. I don't remember who went up the ladder into the loft first. I was there when the body was moved. My father was lying on his back with the gun across his body diagonally across his left leg with the butt of the gun resting between his feet. The muzzle of the gun was up along his side, the gun being on top of him or across his body. The shot had hit the ceiling by the two by four in the ceiling and his feet in reference to the position of the shot were just a little west, about six inches west, almost directly under and a little to the north. He was under the first rafter, beginning from the west; it would be the first rafter two feet from the end. I don't remember whether there was any shot in the cross member that comes across the rafter, but there were a few scattered shot in the top of the sheeting upon which the shingles are fastened. I noticed parts of his clothing, just threads, up close in there where the shot had taken effect. I noticed this myself. I looked around at other boards in the roof but found only the spot where one shot had taken effect. I did not notice closely, but I remember flesh on the roof of the barn. It was in the top and looked to be in the supports. There was also flesh on the floor. I don't remember where my father's arms were as he lay there. It is too long ago, and I guess I didn't take very close notice of that. I didn't look very closely at the condition of his face, but I have a pretty plain picture of it. I noticed his chin. The shot had hit him in the left side of the face, but I don't remember whether his chin

was still discernible. I do not recall the condition of his mouth as I only saw him this once, nor do I recall the condition of the left ear. I never examined his left shoulder. I only looked at him generally and didn't make any minute examination.

I am almost of the same height as my father; there is but a fraction of an inch difference, and I am of the same dimensions generally.

Witness Melvin Bowman stepped down from the witness box in front of the jury and the stock or butt of the gun was placed on the floor by his feet with gun in a nearly perpendicular position to the floor against his body with the muzzle or end of the barrel pointing upward alongside his left breast and in this position was requested to reach the trigger with his finger. But the witness was unable to reach the trigger with his finger while the gun was in this position without bending his body. With the gun in the same position he then bent over and reached the trigger with his finger and in so doing the muzzle or end of the barrel extended above the top of the left shoulder of the witness.

REDIRECT EXAMINATION BY MR. JONES:

I know that these shoes that have been marked plaintiff's Exhibit No. 2 are the shoes my father was wearing at the time of the accident. I think they are in the same condition now as they were at that time. They have not been used.

PLAINTIFF'S EXHIBIT NO. 2 received in evidence.

This winter we had quite a little snow before the accident, and there had been a lot of sparrows there. These granaries were open so that they could go in and out, and we were feeding a little wheat which was quite a treat for the sparrows. There was no hay on the floor of the barn at the point where father was found lying after the accident, but there were a few lucern leaves on the floor.

BRIGHAM HORROCKS, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JONES:

My name is Brigham Horrocks. I lived at Blackfoot since 1919. I was acquainted with John D. Bowman, having known him as long as I can remember, both being born in Heber, Utah. I have been in the merchandising business at Blackfoot since 1924, new and second hand furniture, and other kinds of things, operating under the name of Clegg Furniture Company. Mr. Bowman worked in the same store about a month before in the winter.

I recall the day the accident occurred. I saw Mr. Bowman at the store on that date at about 2:30 in the afternoon. He got two shot gun shells at that time. He had gotten shells there before. He would come in in the winter time and buy not more than 25c worth of shells at a time, and very often he would get two, three or four

shells. The price on shells was five cents per shell. When he got the shells he said he was going to shoot birds.

I knew he had a stroke. I went to his home many times when he was sick. After he had the stroke, for the first few months I was there every day and sometimes twice, and as he improved I didn't call so often, but I saw him two or three times a week. I could see a very marked improvement as time went on. At the time of the accident, he seemed to favor his right hand, and other than that his physical condition was good. He would show us he was getting better. His speech had an impediment. It was not too plain; I could understand lots of his words but not all of them. At times he could be understood better; he would say three or four words without any trouble at all, and at other times he would only say one or two words.

I think he left the store that day about 2:30 in the afternoon. He seemed to be the same to me as he did for days. He was alright and gaining all the time and was happy about it. He would always say "Hello" and "How are you" when he met you, and whenever you went to his house to see him, he was tickled to see you, and when you left he would always say to come again or don't go now, or something like that. His family relationship was very good.

#### CROSS EXAMINATION BY MR. SHIELDS:

He bought two twelve-gauge shotgun shells from me. I did not wait on him as he helped himself. He did not pay for them on that day. It was his habit to buy shot-

gun shells in two and three and never more than a quarter's worth; this was over a period of five years, longer than that. The time he bought a quarter's worth of shells before this day, I cannot say, but it would be in 1934, making an interval of at least two years that he didn't buy any shells. These were the only shells that he bought from me during the period from the time that he was taken up with his sickness to the present time. This time he came in and helped himself. He was familiar with the store. I walked up to where he was and wrapped up a package I had that another fellow had bought, and he showed me that he had two shells. I said to him, "You don't want them. Leave them here." I said that to him in a kind of a kidding way, and he said "I am going to shoot birds," and he walked out as I wrapped up the package for this other fellow. As I remember it, it is every detail. I do not remember any conversation about telling him I didn't know what he was taking away.

I did not see the body of the deceased after the accident until it was in the casket and prepared for burial.

#### REDIRECT EXAMINATION BY MR. JONES.

It was his custom to come in and if we were not ready to wait on him, he would wait on himself. As he started to leave with the shells, I said "Jack, you don't want them. Leave them here." I always kidded with him and he did with me. There is nothing unusual in this; he told me he was shooting birds, and I knew it was his custom, so I dismissed it from my mind entirely.



JOHN N. BARNARD, a witness on behalf of plaintiff, being first duly sworn, testified as follows :

DIRECT EXAMINATION BY MR. JONES :

My name is John N. Barnard. I have lived at Blackfoot approximately thirty years. I am a sugar factory employee. I work as a mechanic outside, and when they operate I am foreman. I was at the sugar factory on the day that John D. Bowman met his death. I quit work at 4:00 that day and went into the shop which is separate from the factory. I went to the Bowman barn about 4:20 that afternoon to get my horse and lead him out to water, and when I got him outside in the light I noticed there was blood on his side. There was no puncture in the skin. On tracing its source, I found it had leaked through the floor of the hay loft, and I went up and found Mr. Bowman lying on his back in the southwest corner just under the window. I did not examine the body at that time. I then notified one of the boys and told him that his father had met with an accident and he said we better get brother Bert and the other brothers who are in town and we then notified Bert. I did not notify any officer until after I found the boys in town, and they went to the sheriff's office. I didn't go back with the boys and the officers.

When I went back the sheriff and the coroner were there, two of the Bowman boys, and I think another gentleman was there too. I observed what they were doing. I went up into the loft. The body was in the same position and condition when I got there with the coroner as

it was when it was when I saw it first. I noticed that the gun lay across the body in a kind of diagonal position, with the butt of the gun toward his feet and the muzzle toward his head. It was not lying in a perpendicular position, that is, perpendicular with the body, but it was more across, and the muzzle pointing toward the left. His feet were about a foot and a half from the wall, a trifle north of the north side of the window. There was one shell to the right of the body. There were no other shells on the floor, but the sheriff extracted one from the gun. Both shells were empty. I noticed that one shot had taken effect in the roof of the barn about two feet from the west wall and about ten feet from the floor. It was directly over the window. It was back kind of. The shot in the roof was more horizontal than perpendicular from where his feet were. I observed threads of a denim coat, and blood and particles of flesh at the point where the shot had taken effect in the roof. I believe his cap was laid just to the side there. There was a piece of two by six, lying on the left side of the body, and it looked like it had never been disturbed from the dust and leaves that were around there. I observed nothing else, no contrivance of any kind. So far as I could see no other shot took effect in the barn. The height of the window from where the body was lying was about four and a half feet from the floor. There was a canvas kind of dropped down about half-way across the window. There was nothing to obstruct a load of shot being fired through the window.

Mr. Bowman was dressed in khaki pants and a blue denim jumper. He had shoes with rubbers on over the shoes. He was dead the first time I saw him as far as I could tell. The shot looked as if it had struck the left side of his coat and gone into his chin and took the left side of his face off.

#### CROSS EXAMINATION BY MR. SHIELDS:

I did not examine the face of the dead man closely as he lay there. I took no notes. I did not notice the jumper that he had on very carefully. I don't know as I said there was a hole in the jumper, but part of the lapel was shot away, I do remember that. I didn't pay a whole lot of attention to that jumper for I was just a little bit excited. I cannot tell whether there was one or two holes in the jumper. My best judgment is that there was some of the lapel gone, because there were some of the threads in the roof.

When we went back to the loft of the barn, so far as we could tell the body had not been moved from the time we left until we came back. And the gun was in the same position with the barrel, or muzzle of the gun pointing at the man's head, or in that direction, and the butt was on the ground, or near his feet, and his body lay in a slanting direction not square with the building or lengthwise. I think it laid more toward the north and the gun lay across the body, and the barrel of the gun, the muzzle pointed toward the left side of his head and was still lying on his chest. I don't remember the position of his hands. I did not examine the gun, but I did see this dis-

charged shell lying to the north of the prone body, and while I was there the sheriff extracted the second discharged shell from the gun.

I am not able to give a very definite description of the dead man's face. The statement which I made with respect to this shot having gone in under the chin is the way it looked to me. I cannot say for sure that part of the chin was still there. I was not accustomed to a sight of this kind, and I didn't pay very much attention to it; the things I have spoken of are the things that forcibly struck me. I was the first one to find the body and under the circumstances I have related. I did not see the body after it was taken to the undertaking parlor. The search I made for the shot was just a casual examination. The place where the shot went into the roof was three or four feet over my head. I did not climb up to it. Whatever judgment I have was obtained from the floor, from looking at it from the floor of the loft. There was no light there. It was fairly light in the barn at that time. When the sheriff and undertaker got back, it was about five o'clock. That was on February 16. The window was not quite half covered with canvas, dropping away from the top, and I believe the cover dropped about half way at the bottom, and it kind of feathered, so to speak, away toward the south.

JOHN C. SANDBERG, witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JONES:

My name is John C. Sandberg. I live at Blackfoot,

am coroner of Bingham County, Idaho, was such on the 16th day of February, 1937, was called officially that day about five o'clock, or possibly a few minutes after. I went to the sheriff's office and to the sugar factory barn. The sheriff, Mr. Barnard, and one or two of the sons of Mr. Bowman went with me. When we got to the loft of the barn we found the body of Mr. Bowman in the southwest corner near the window. I made no measurements of the window. We found the deceased near the window, his head to the southeast, not quite in line with the barn. We found a gun lying across his body near the feet; the butt was near his feet but not quite in line with the body; it was diagonal toward the left side. We also found that Mr. Bowman had been shot in the left side of the face. The sheriff found an empty shell to the right of the body, and then he extracted another empty shell from the gun. I did not discover any contrivance of any kind that could be used there at all. There were some hay leaves on the floor, and I believe a plank, a two by six, back near the window. When the sheriff lifted the plank, it showed an imprint or impression on the leaves, indicating that it probably was there for some considerable time. We examined the roof above the deceased, and in the rafter we found shot with particles of flesh and threads of clothing. That evening we made an examination to determine whether there was any other shot that took effect in the hay loft. It was beginning to get a little dark, and the following morning the coroner's jury was summoned

and the jury with myself and the sheriff made a thorough investigation of the hay loft. We found no other shot except the one I just testified to in the roof above the deceased. The jury returned a verdict and I signed the standard death certificate of the state as coroner. Mr. Peck of the Brown-Eldridge Mortuary took the body out of the barn. As near as I could determine, the left side of his face was pretty well shot away, indicating to me that the shot had probably been under the left side of the chin where the shot first went in. He was dressed in a jumper, and a sweater that was under the jumper, a shirt, and the usual underwear. There was a hole on the left side of the denim jumper near the shoulder, and a larger hole near the top of the shoulder on the left side.

#### CROSS EXAMINATION BY MR. SHIELDS:

I made the usual preliminary examination to see if the cause of death could be determined. The examination made at the barn was somewhat superficial, without definitely diagnosing any cause of death.

When I went to the mortuary, I found that the evidence of injury was to the left side of the face, and as near as I can describe it, that side had been shot away. If I recall, the chin was there. I don't know whether the entire chin was there or whether the shot extended down to the left side to include the chin, but it was down the left side quite a distance. I don't hardly think the flesh was all there on the left side underneath the chin. The undertaking work had not all been done when I got there a second time, but they were doing some of it, and they



were preparing the body for that work. Part of the chin and the jaw bone on the left side had been shattered, and the left side extending to the eye was pretty well torn away. I don't recall how much of the flesh on the left side under the chin had been knocked away from there. I don't recall whether the sweater underneath this jumper had a hole in, or not, but there was some markings the same as the jumper. I am not sure whether they were just the same, or if they had been torn away, or what, but it would seem that the shot was through the jumper, but I don't recall whether that sweater was intact, or not, but the jumper had a small hole in the shoulder, in that piece of material that goes across there, and then there was a larger hole near the top. I am not sure whether the larger hole was closer or farther away from the collar, but as I recall, it was about half way. Exhibit No. 3 is the same jumper of which I have been speaking. The smaller hole is closer to the collar than the larger one I observe from this exhibit. He wore this jumper at the time I saw him lying there.

E. T. PECK, a witness on behalf of plaintiff being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JONES:

My name is E. T. Peck. I live at Blackfoot, am a funeral director and also in the furniture business, being so engaged a number of years. I went to the barn of Mr. John D. Bowman on February 16, 1937. I do not recall who accompanied me. I think the sheriff, the coroner, a Mr. Barnard, and some of the Bowman boys were



there when I went into the loft of the barn. I did not make any particular examination at that time. Several men were standing in the west end of the barn, and I could see the body lying there. It was near the window of the west end of the barn with the head lying toward the north and the feet toward the south. The left side of the face was badly shattered and there was a gun lying over the body. I think they were examining the shells that lay on the floor near the body. I do not know whether any other shells were ejected from the gun while I was there. I took no part in the examination of the loft to determine where, if any place, shot had taken effect, but they were making an examination. After this examination, with the assistance of the sheriff and somebody else, we put this body into the receiving case and I took it to the east end of the barn and let it down through the doors to the car and took it to the mortuary. I saw the jumper the deceased had on at that time, but I made no particular examination except to say that it had a hole in the left shoulder. The wound on the deceased's face, according to the best description I can give was the entire length of the left side of the face from the chin clear up past the eye.

I was at the undertaking parlor when they took the clothes off and put the body on the table, being there when the coroner came. I cannot say that I made any closer inspection of the face, because I had my opinion formed as to where the wound was. I saw the wound again, and it confirmed my former opinion. The coroner

was there and wanted to see the body before it was touched by us.

CROSS EXAMINATION BY MR. SHIELDS :

Most of the left side of the face was gone. There were flaps of flesh at the left of the eye hanging down, but I don't remember as to the flaps of flesh from the chin. I cannot positively answer as to the mouth, what its condition was. The left eye was out of its socket. I can't answer as to the left ear. There was no reason for me to make any particular detailed examination or inspection of the body. I have an embalmer there who takes care of that work. I don't do very much of that actual work any more, and he did that work on this body. When the body was prepared to be put in the casket, I saw that it was properly done, and that is the last attention I paid to it, except of course, taking care of the funeral.

REDIRECT EXAMINATION BY MR. JONES :

I think I said that the left side of the face was mostly destroyed, and that would be true with reference to the left side of the chin. I didn't embalm this body. The party who did embalm the body was not a certified embalmer; he was an apprentice.

BYRON JACKMAN, a witness on behalf of plaintiff, being first duly sworn, testified as follows :

DIRECT EXAMINATION BY MR. JONES :

My name is Byron Jackman. Since 1911 I have lived seven miles north of Blackfoot. I am not related to the Bowman family in any way. On the day Mr. Bowman

lost his life, I arrived at the sugar factory around three-thirty o'clock. I heard a shot just as I turned into the barnyard gate. I know where John D. Bowman's barn was. It was about 150 to 200 feet from the barn when I heard this shot. Later I heard another shot. It was about 15 or 20 minutes between the two shots. I heard the first shot around three-thirty or twenty-five minutes to four.

I have been up in the loft of the barn before as I kept my team in the barn. As evidence of life in the barn there was a large number of birds that would fly out of the window as I went up to the loft. I did not hear of Mr. Bowman's death on that day. I had occasion to examine the loft the next morning. I can't say who all was there, but I know that Sheriff Corey and one or two of the Bowman boys were there. I went around with Mr. Corey. The only thing I ever saw there was where one shot had hit the top of the barn up near the window. There was some blood there and some particles of flesh and clothing that was in the top of the barn at the point where the shot was embedded in the wood. We went over the barn from one end to the other on the floor looking for other shots. It was light enough to see the top of the barn too, but I could not find anything.

#### NO CROSS EXAMINATION

J. D. GIBBS, a witness on behalf of plaintiff, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION BY MR. JONES:

My name is J. D. Gibbs. I have lived at Blackfoot

for 30 years. I knew John D. Bowman about ten years. I first learned of his death on February 16 between four and five o'clock. The body was still there when I went to the place where it was found. At the time the sheriff, the coroner, Mr. Peck, and one of the Bowman boys and some others were there. When we went in the body was lying in the west part of the barn, and there was a gun lying across the body, and the left portion of the face was shot away. There was a piece of two by four that didn't look as though it had ever been moved and there were hay leaves all over the floor, and some parts of his clothing and flesh was in the rafter and roof of the barn. About the clothing there was flesh and blood. There was shot in the ceiling right over the window and back to the north, right over the body. I did not make any examination to ascertain if any other shot had taken effect in there. The cloth in the roof was pieces of blue denim jumper, part of the jumper that Mr. Bowman had on when I saw him. His head was lying in a southeasterly direction with reference to his body. Some of the shot had cut through his jumper on the left side.

#### NO CROSS EXAMINATION.

L. P. ADAMS, a witness on behalf of the plaintiff, being first duly sworn, testified as follows :

#### DIRECT EXAMINATION BY MR. JONES:

My name is L. P. Adams, of Riverside, about five miles west of Blackfoot. I have lived in this section since 1886. Farming has been my occupation most of the time,

but in the last years I have followed road construction for contractors. I knew Mr. Bowman.

I went to the barn as a member of the coroner's jury about the middle of the next afternoon. It was quite light in the barn. We went with the coroner and the sheriff, and they explained to us where the body was lying and they showed us where the shot was that they had found in the rafter of the barn. There were two windows in the west and two in the east of the barn, and this was the south window of the two in the west. This shot was right to the side and part of the shot was in the rafter, the first rafter from the west end of the barn, about a few inches north of the line of the north side of the window. This was the southmost window in the barn, and I observed that there was particles of flesh and blood where the shot took effect in the barn, and also particles of the blue denim jumper at that place. The entire jury, including myself, stayed better than an hour and looked closely all over the barn. There were five other jurymen besides myself, and the sheriff and coroner. We could not find any other shot, but this shot showed quite plain, like it was fresh marked on a board rather shortly after it is done. I don't think the undertaker had done a great deal to the wound on his face because the jury went to the undertaker's before we went to the barn. The left side of his face was practically shot away. As near as I can recall, the wound started on the left side of the center of the chin, but I do not recall exactly where it would be.

## CROSS EXAMINATION BY MR. SHIELDS:

I didn't pay any particular attention to the condition of the deceased's mouth at the undertaking parlor, but I recall that there was some skin kind of laid back just above one ear and close to the eye. It was just laid back. I do not remember some skin lying back on his neck nor his ear being torn away nor the eye being out of the socket. If I paid very much attention, I do not recall it now. I haven't thought any more about it since that time, but I remember it was quite a bad looking sight. I knew the left side of his face was pretty well gone. The wound began right about the center, probably off center a little, of his chin and clear up to his eye; I would not be sure whether the chin was all left or not. From the eye up was left fairly good as I remember it now. I don't recall that there was any flesh down underneath the jaw. As to the mouth, it seems to me like there was a little of the skin still visible there. I am pretty sure the nose was partially visible. He didn't have clothes on when I saw him but was on the cooling board at the mortuary, covered with a sheet. On his shoulder there was a mark extending from about the left nipple upward to his shoulder. It veered just a trifle toward the shoulder. The direction was probably closer to the center where it started and probably veered a little bit. It has been quite a while and I could be mistaken about this. The only information I had about this was that which came to me in the course of my official capacity as a member of the coroner's jury that was viewing the scene of the alleged ac-

cident and the remains. I had known Mr. Bowman for about 15 years and knew of the illness which had overtaken him in the latter part of his life. I saw him frequently after that, although I would say sometimes it was quite a spell in between times. After he began convalescing I saw him at times; the summer after he was sick I was away quite a lot, but that following fall and winter I saw him quite often. In the latter part of the season I saw him two or three weeks apart, and later in the year I saw him more often. I have talked with him and I noticed the impediment in his speech. At times I had some difficulty in understanding him. Sometimes when he would talk he could say two or three words, and then maybe some word would bother him and he would have to finish the sentence more by motion; and other times he could the words right plain. I noticed the last time I was with him for any length of time that his right hand was a little awkward.

REDIRECT EXAMINATION BY MR. JONES:

I knew Mr. Bowman very well. I saw him after the harvesting season of 1936, having a long talk with him in November. Of course, I might be off on those dates. I went to the house and nobody was home, so I went down to this shed where he keeps his machinery and I think he was repairing some double-trees. I just walked up and slapped him on the back and he whirled around and took hold of my hand. At that time he looked good and acted quite good. Of course, I cannot remember anything particularly that he said outside of I do remember



of asking him about some third crop hay that was there, and I asked him what he was feeding that to and he said to the cows. He was very cheerful in his action; he was always cheerful when I saw him. I don't think it would be over a week before the accident that I last saw him for I generally saw him when I went to Blackfoot.

The mark on his shoulder was kind of a black mark running up there.

BERTHA E. BOWMAN, plaintiff, being first duly sworn, testified as follows on her own behalf:

DIRECT EXAMINATION BY MR. JONES:

I am Bertha E. Bowman, the widow of John D. Bowman; we had been married about 35½ years and had lived in Idaho about 22 years, either in Riverside or Blackfoot. We moved to Blackfoot four years ago, in January, 1934. I have one son in college, and at the time of the accident my husband and I lived alone. He always was very kind to both me and his family and he was of a happy and cheerful disposition. He had always been kind to me from the time I married him. His financial condition was good; he never did go in debt. He was not in debt at that time. He sustained or suffered an illness some fourteen or fifteen months before he met his death, or about the first of December, 1935. He was very ill for a few weeks in bed. His right side was paralyzed, but he began to improve and as time went on the improvement was continual until the time of his death. He was confined in bed about six or seven weeks. After he got out of bed, he continued to improve up until the day of

his death. At the time of his death his physical condition was perfect with the exception of his speech and his right hand. He couldn't grasp things like he did before his sickness, and at times he dropped objects, and especially the dishes when he was wiping them for me.

He told the boys in my presence that he would show them how to farm, speaking of his future plans, and stated to me that he wanted to help them with the crops in the spring of 1937, and that as soon as our son was out of school in June we would take a trip to California to visit our daughter.

Mr. Bowman had a custom or practice of shooting birds, while we were living on the farm. We lived at Riverside until 1934, after which we moved to the place where he died. He shot birds the first winter that we were there, the winter of 1934. His stroke was on December 1, 1935. After his stroke he spent his evenings and his time listening to the radio and reading the papers, and I always talked to him and we read together. We read many chapters each night. We went to shows and entertainments, and in the fall we went to political rallies. He went down town and back whenever he wished. He always went down on Wednesday and Saturday mornings to my son's barber shop. If he wished to go down he walked down and back at other times. He nearly always walked. It is a little less than a mile from our home to Blackfoot's center of town. He talked about his physical condition. I cannot mention any dates, but we often talked about it, but I can't say the time and place,

but it was evening on many different times, and also in the day time he would tell me that he was better, and he went through a lot of movements to show that his arm was better, movements to show how strong and better it was, for it had been so weak.

We had two guns in the house after his stroke, one a twenty-two and the shotgun on display here. The twenty-two was always in the house and there were shells there for it. The shotgun was not always in the house because we loaned it, and it was with other members of the family part of the time, and then it would be brought back and put in the same place in the clothes closet that it always was. It was in and out. The shotgun was in our house during the summer that Mr. Bowman was recovering from his illness.

There were times when I left Mr. Bowman at home alone for a considerable period of time; I went every week to Relief Society meetings and then I went to Utah in the fall and was gone for three days and no one stayed with him at that time. I can't give the date I went, but I returned the evening of Thanksgiving; that was the November before he died. I was gone nearly three days and two nights. As to shells around the house, there were twenty-two shells at all times, but we never kept any shotgun shells at any time.

The day of his death he got up and made the fires, and we had our breakfast together, and then he went down to the barnyard to help haul some hay, and he came in at noon and ate a hearty dinner and helped me to clear

up the table, and wiped the dishes. I went to my meeting and he went out toward the barn, and that is the last I saw him. Before he came in at noon, he was at the barnyard helping the boys. After this stroke he did many little things around the place to help me. He milked the cows and did a lot of chores around the place. He chopped kindling, shoveled snow and made paths for me to hang my clothes out,—I can't mention all the things that he did for us. He always helped with the dishes; if he was in the home at all he would help so that we could be together. He could read but not very long at a time before his eyes were weak from this stroke but he could read. I didn't observe him when he first started milking the cows, but I have seen him later on. I cannot give the positive dates that the shotgun was in our house during the six months period before the date of Mr. Bowman's death, but I know that it had been in our home and where it always had been kept. My son would not know about that. He could not know it was not there. It could come and go without his knowledge. Our son had the gun for a continued period of time for six weeks, or two months, and then the other son had it at his house for some period of 60 days at one stretch before Mr. Bowman came over for it. I am almost positive the gun was in our house during the month of January, 1936. I cannot tell when it was taken away the first time after January, nor when the boys borrowed it. It was in the closet and if the boys wanted it they came and got it. I do not know for sure that it was away for six weeks im-

mediately prior to the date that Mr. Bowman used it on the 16th day of February and I know that they were shooting birds at the feed yard about every day.

CROSS EXAMINATION BY MR. SHIELDS:

After my husband's death someone purporting to represent the Insurance Company brought me papers to fill out about the particulars of my husband's death, which I filled out and signed.

MR. SHIELDS: I am not going to make any point of the fact that proof was not filed. Whereupon it was stipulated between counsel that plaintiff in this action made and furnished and delivered to the defendant proof of the accidental death of John D. Bowman and all proof that was required under the policy for double indemnity under the accident death clause of the policy and that no question is raised by the defendant as to that matter, nor will be raised during the progress of the trial or at any time, and it is admitted by the defendant that this stipulation extends to and goes to the making of claim by the plaintiff for double indemnity under the accidental death clause of the policy, but defendant does not admit that John D. Bowman came to his death by accidental means.

WITNESS RESUMING: Mr. Bowman's recovery from this illness was slow at first, but it seemed so gradual that we could see the improvement continually. Until the time of his death he had a rather pronounced speech impediment and had marked difficulty with his hand, especially in cold weather. It would become numb

and the circulation was bad in cold weather, and I would have to run him. I thought it was the circulation that was bad. I don't know whether the stroke impaired his eye-sight so much as his eyes have been weak for quite a few years.

DR. A. E. MILLER, witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JONES:

I am Dr. A. E. Miller of Blackfoot, a surgeon and physician by profession. I have lived in Blackfoot since January, 1934, a little over four years. I knew John D. Bowman during his lifetime, and I had occasion to see the body at the undertaking parlor while it was there after his death; it was the day after his death. I graduated from the University of Oregon Medical School at Portland, Oregon, served my internship at the Los Angeles County Hospital, and am now licensed as a practicing physician and surgeon in the state of Idaho.

At the time I examined the body of John D. Bowman at the undertaking parlor the day following his death, I found there was some friction marks, or what you might call an abrasion approximately from the nipple, that is, starting at the nipple and terminating at the collar bone along the left side, and then on his face there was—I might say the undertaker had done some repairing on the face, but there was a place approximately near the outer third of the jaw bone on the left side where there had been some repairing on the jaw, and on the inside



middle there was quite a bit of repairing, and quite a good deal on the outer side that he had repaired, that is, his plastic work was done, and there was some softening on the skull on the left side. From the examination I made, it was my impression that the load had possibly split out the jaw bone from going in from out here (indicating). The left eye was dropping out, sort of a dropping of the socket a little. The cause of that was possibly a destruction of the muscle of the cheek bone which was depressed. I didn't feel it, but it gave the impression that it was depressed. It was in the area of the external wound on the left side of the face, in the same place.

CROSS EXAMINATION BY MR. SHIELDS:

My examination was not merely perfunctory for the purpose of signing a death certificate. I signed the death certificate with this reservation: I made a notation of what the coroner's jury had agreed on as the cause of death. I didn't examine the body with the intention of making a certificate of the cause of death or for the purpose of being a witness or anything like that. I looked into the mouth. The mouth was partially drooping open. I didn't feel around there, but there had been some repair work done that I could see. I was there during the time of the examination about 10 or 15 minutes.

A thrombosis is the clotting of blood in a vessel, and a cerebral thrombosis is a clot on the brain which produces an action akin to paralysis. It does produce paralysis, depending of course on the amount of damage to the brain tissue and depending of course on the pressure,



or the edema. Of course, when brain cells are destroyed, they do not regenerate, but as I say, depending on the pressure, it might clear up. Depending upon its location, it might also cause instant death.

REDIRECT EXAMINATION BY MR. JONES:

I observed Mr. Bowman during his lifetime to determine if he was recovering from the illness which he had received in December, and he was recovering nicely. He came in for a check-up fore this time, and was doing nicely.

RECROSS EXAMINATION BY MR. SHIELDS:

In the thrombosis, that is, if there is an actual destruction of the brain tissue or the nerve cells, they never regenerate, if the brain cells are actually destroyed; but if the paralysis is through edema, they will gradually come back as the pressure is released.

REDIRECT EXAMINATION BY MR. JONES:

The extent to which the area is destroyed would depend largely upon which the result of the recovery is, and if there is a good recovery, it is demonstrated, of course, that there was not much destroyed. There was a good recovery in this case.

RECROSS EXAMINATION BY MR. SHIELDS:

His mind was alert but he could not coordinate his speech. He knew, of course, what he wanted to say, but his speech remained hampered as a result of this thrombosis that he had the prior year.

PLAINTIFF RESTS.

MR. SHIELDS: Comes now the defendant, the Kansas City Life Insurance Company, a corporation, and the defendant in this action, and makes a motion for a non-suit upon the ground that the plaintiff has not established accidental death in the case in question here. The defendant believes that the obligation and the burden of establishing death in this particular action by reason of accidental, violent and external cause is upon the plaintiff, and we believe that they have failed to establish this in that manner. They have established the death, but we feel that the proof is entirely lacking as to the accidental feature, in connection with this case, and for that reason, and upon that ground, we asked the Court for an order of non-suit at this time.

THE COURT: And do you want to be heard upon this motion?

MR. SHIELDS: I am willing to submit it.

MR. JONES: Certainly.

THE COURT: Then it, the motion, will be denied.

MR. SHIELDS: May we have an exception?

THE COURT: You may have your exception.

HOWARD PACKHAM, witness on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SHIELDS:

I am Howard Packham of Blackfoot, Idaho, age 25. I have lived there about a year and a half this last time; I had lived there before. I was living in Blackfoot on the 16th of February, 1937, being employed there as an

embalmer for the Brown-Eldredge Mortuary. I was not registered as I was an apprentice embalmer at that time. I was working in connection with preparation of bodies for burial then, and on that date I had occasion to see the body of John Bowman. I first saw it in a receiving case when it was opened in our establishment after being brought into the Mortuary. I made an examination of the body, coming in contact with it at that time. I worked on the body. As I remember, the body was brought to our establishment by Mr. Peck, my employer, and that was the first time I saw it. The clothing was removed with the assistance of other people, I don't remember who. He was dressed with shoes and ordinary socks, trousers and an ordinary gray work shirt, a blue jumper of some kind, and other than that I don't remember much about the clothing. The body was placed on the preparation table. I immediately set about washing away any blood that had accumulated so as to get down to the flesh and set about repairing his damaged features. As soon as I had gotten the blood and the loose matter washed away, I set about embalming the body with an injection of embalming fluid which takes about several hours to accomplish embalming. After this was done, I began the reconstruction of the features of the face. The first thing I remember is that the left eye was completely out of the socket, the left eye ball that is. It was lying on what we call the temporal region of the left side. The left ear was split from the lobe up about halfway in the ear, and there seemed to be about three distinct rents or

tears in the flesh of the left cheek. It seemed to be in more of a fanlike shape; the smaller part was down here (indicating) and they were extending in a fan-like shape over this side, over to the upper part of the head and down here (indicating) to the point of the jaw. The palate seemed to be in about five different pieces, more or less, but there were about five distinct sections or broken pieces of the palate. A section of the right jaw bone protruded through the skin, breaking through the skin on the right side about three inches between the point of the chin and the right ear, about half way from the right point of the chin to the right ear. I felt the head of the deceased with my hand; it felt loose to the touch and was not solid. I was not able to tell distinctly where his mouth had been or was. I tried to reconstruct the mouth from a comparative measurement of the other anatomy of the face, and did so. On the region of the left shoulder there seemed to be a slight scratch of some type, about two inches in length. No other mark was there, and there was no other mark or wound on the right side except the protruding jaw bone on the face. As to bruises or discolorations other than those described, I am afraid I cannot be very definite about bruises or broken flesh around this wound on the face. The broke tissue was red. Of course, in the process of embalming, through the lack of tissue off from the broken tissue, the latter assumes a rather burned appearance, which is the action of the formaldehyde on the broken flesh or tissues. The roof of the mouth was in about five different pieces,

still seeming to be connected together by some connecting tissue. They were not wholly destroyed, there being enough that I could distinguish that it was the roof of the mouth. There was blood and matter of some sort oozing through these breaks, but it would be hard for me to tell what it would be. On the left side under the chin and neck as I remember, was a tear about three inches long, extending somewhere on the left side sort of diagonally down toward the side of the neck, from this point here (indicating) on down. The flesh was still there at the place where this tear was, going down on both under part of the chin on both sides, but not very much of the chin was left on the left side; hardly any of it was left. By fan-like tears, I mean that they get larger towards the extremities and are smaller at the base. Practically all of the left side of the face was gone. It seemed as though those tears could not be reconstructed definitely into their original shape, but only to a point about midway of the cheek. They seemed to be extending out to here (indicating the breaks on the flesh.)

I removed the jumper among the clothes, with the assistance of Mr. Peck. That is the jumper and is in the same condition as it was when it was removed from the body of the man. I don't recall whether he had a sweater or suit of underclothes. Exhibit No. 3 is the jumper I removed from Mr. Bowman.

EXHIBIT No. 3 admitted in evidence.

IRA COREY, witness on behalf of the defendant, being first duly sworn, testified as follows:

## DIRECT EXAMINATION BY MR. BISTLINE

My name is Ira Corey. On February 16, 1937, I was sheriff of Bingham County, serving in such capacity for four years. At the present time I am a state traffic officer, having held that post since August 7, 1937. I saw the body of John D. Bowman in the southwest corner of the hay loft of the barn back of the sugar factory at Blackfoot about five o'clock in the evening along with Coroner Sandberg, Jack Gibbs, two sons of Mr. Bowman and John Barnard. We went into the hayloft, no one ahead of me, but Mr. Sandberg, the coroner, Gibbs and Barnard and the two sons all going in, following one another up the ladder, which was made of a one by four nailed on a siding on the north wall of the barn, a little to the east of the center of the north side. This was the only entrance to the loft I noticed. I saw the body lying in the west end of the hayloft and proceeded to make an examination as to who it was and the conditions surrounding. Mr. Sandberg and I made an examination and the rest of them stood back and said or did nothing. We looked to examine the wound on the face, the position of the gun, the position in which the body was lying relative to the location of the barn walls, and then I removed the gun from the body, just reaching down and picking it up. It was lying with the butt of the gun between the feet of the deceased, kind of lying between his legs, more by his left arm, kind of diagonally across his body. The muzzle of the gun was just a little to the left of the position of the heart of the body. His left hand



was lying down to the side of him. When I picked up the gun, I noticed that it had blood stains on it, and an empty shell in the barrel. A little piece of flesh was in the muzzle and fell out when I tipped the gun up. I extracted the shell which had been discharged. The trigger hammer was down pressing the firing pin against the shell. I extracted the shell and looked around for other shells, finding one empty shell lying to the right side of the body. These two were all the shells we were able to find. I took the gun into my possession, took it to the sheriff's office where we made a further examination that same evening. We found that it was workable, that is, whether it would extract the shells from the gun and whether the hammer would fall on the firing pin and cause the shell to explode; in general, to see whether the gun was in condition to shoot or not. The trigger pressure was just average. We examined the gun to see if it could be discharged without pulling the trigger; we raised the hammer and dropped the gun on the floor a distance of one foot with a sudden jar to see if the jar would set the gun off, but the test failed to cause the gun to go off or fire. We made probably a dozen such tests.

At the loft we examined the surroundings. The hay mow was empty with the exception of a few alfalfa leaves on the floor of the barn there. The floor was entirely covered with leaves. The ceiling was bare and we found a little at the left and over the body where a charge of shot had entered the roof. At this point was a little piece of denim pinned to the roof where a shot



had held it there; there was some small particles of flesh and blood with stains there, and from there north for a distance of probably six feet were pieces of flesh up in the roof, and some particles on the cross bar or the binder from one side of the building to the other. There were pieces of flesh on that. At the window in the west part of the barn, just above the seat of the body, were small particles of flesh and bloody spots on the sill. The window in the west part of the barn was about three feet square and about five feet from the base of the window to the floor. There were particles of flesh on the edge of a 2 x 4 or a 2 x 6 at the bottom of the window, which protruded into the barn. I don't remember about any glass in the window, but there was some canvas there on the window to the south of that one. This was about eighteen inches to the wall, north of Mr. Bowman's body, and then it was about five feet above him. His feet were in front of that window, at the bottom of the window, but the body laid away. The window closest to him was the one with particles of flesh on. His body was in the southwest corner of the barn.

The left side of his face was practically gone, and no mouth was there. I didn't notice the right jaw bone, but the left eye was not in the proper position. It was lying over with the flesh, apparently partly out of the eye socket. He was lying directly on the back of his head. His lower plate was broken into pieces in several places and lying with the mangled part of his face, and the upper plate was out and lying along the side of the

face. Neither plate was in his mouth, the upper plate being to the left of his face, lying along with the torn part of his face. His teeth were where his face was torn and strung out. I made no observation as to the teeth in the plates. Either the coroner or myself picked up the plates, but the coroner took possession of them and turned them over to Mr. Peck, the undertaker. There was not much blood on the floor, but the part of the face that was injured was bloody. I couldn't tell one part of the face from another very easily because of the blood being commingled with the flesh and torn parts of the face. His left ear was practically covered with a piece or pieces of flesh lying back over it, flapped back over his ear.

The first time I was in the barn, I stayed possibly three-quarters of an hour. Outside the time one of the other people went out to phone for the undertaker, the entire group of us remained there during that time. The undertaker came about thirty minutes after we arrived, put the body in a carrying case and took it down either the ladder or the north side. It was just starting to get dark when we left there. It was still daylight during this time so we didn't need or use any artificial light to make our examination.

I went back to the barn on the following morning, February 17, with the county coroner, the deputy sheriff, and the younger Bowman boy, the short and heavy set one, about 9:30 in the morning. We examined the interior of the barn closely to see where there could be another discharge of shot, and also examined the location of the

particles of the flesh and shot in the ceiling above the body. We didn't get up to where the shot was, examining it from the floor, which is about ten feet below the marks above. These marks were made where the shots entered the roof and the rafters. The shot was in the rafter and in the sheeting with shot holes sprinkled all around either side of the rafter. The greater part of the shot was on the west side of the rafter. I don't remember seeing any shot holes in the shingles at that time. We made an examination to determine at what angle the shot entered the sheeting and rafter; they had apparently come from the direction or angle where the body was lying. There was nothing I hadn't seen the day before. The piece of blue denim, pinned to rafter by a shot forcing a raveling into the wood, had fallen to the floor. It was about an inch in diameter, the size of a twenty-five cent piece. We picked it up and looked at it, but didn't keep it. I don't know what became of it. I noticed, as I had the night before, the flesh in the rafter, the greater portion of which was a little north, and that there was but little flesh where the shot was. I examined the flesh again, being better able to see than I had the evening before. It was exactly the same as it was on the previous evening; small particles of flesh up to the top; on this cross bar there was also little pieces of flesh that had dried and stuck fast there. It was sort of a mattery, gooey, sticky particles that had been blown into real fine pieces, sort of a pink or whitish color. Being on the cross bar, it was about eight feet above the floor and about four feet

above the point where the other flesh would be. The highest marking of flesh was nearly at the gable. No one moved the flesh then or any subsequent time, while I was there.

Mr. Bowman had on a denim jacket; underneath that I do not know what he was wearing. The jacket had a hole in it and we found a scar on the top of the left shoulder. It was a dark streak across the top of the shoulder, about three quarters of an inch wide and about two and one-half inches long. It appeared as if a hot iron had been laid on there. I saw the body at the undertakers later, after the embalmer had entirely completed his work. When I first observed the body the chin was about half gone, but beneath the chin it was nearly normal. There were no tears immediately under his chin, but there were tears to the left of the chin about here (indicating). The whole side was lain open as if it had been cut with a cleaver. These were the only two occasions that I was at the barn where Mr. Bowman died.

I had known Mr. Bowman about six years and knew his physical condition. I saw him on occasion since his illness in 1935, having seen him as I was driving by his place to the sugar factory in discharge of my duty. As to conversing with him, I only remember passing the time of day. I don't know that he ever spoke, but he waived his hand. I have seen him walking and noticed nothing out of the ordinary. I recall seeing him in the corral, no particular date, but probably some time when I was out serving papers in that section. I probably saw

him two or three times under such circumstances. I did not ever see him up town in Blackfoot after his illness.

#### CROSS EXAMINATION BY MR. JONES:

I examined the barn thoroughly after the accident but could find no other place where any other shot other than the one above his body had taken effect. No contrivance was found near the body. We found a piece of two by four on the floor which a person could tell had not been moved since the alfalfa leaves had been put there. As to the position of the shot in the rafter in relation to the body, I don't recall which rafter it was from the window in the west end. The area of the place was about ten inches where the shot was in the roof. I testified at the coroner's inquest and there said "they were in a circle of about five inches in diameter," but to my best recollection, it was ten inches. There was one empty shell on the floor and another in the gun which I extracted, both of which had been recently fired, also I could not tell by the gun for it was cold, it having been some time since it was fired. They were new shells. We found only where one shot had been fired, but whether it was the first or second we did not know. I thought the window was three feet square, but I didn't measure it, nor did I measure the distance from the bottom of the window to the floor. It could have been less than five feet. I noticed the jumper and the fact that the left side of his face was shot off. I said at the coroner's inquest, in response to a question about the two shots, that "The shot that went through his face would have to go through the hole in

his jumper before it hit his face." If it hit his face, it would have to go through his jumper.

Where I discovered the biggest portion of the flesh was a little bit north, about four feet north from the point where the shot had taken effect. There was some blood and flesh on the lower sill of the window. His feet were about eighteen inches from the west wall, which would make the shot somewhat perpendicular, veering a trifle off to the south from where his feet were lying. The only thing I found around the body was a piece of two by four which was three or four feet long with some alfalfa leaves on it and had the appearance of not having been moved. The scar on the left shoulder had the appearance of a burn and was in close proximity of where the face had been shattered by the shot. I could not say on which window the canvas was. The body was at the southwest corner of the hayloft, but at this time it appears to me that it was on the north, but of course it could have been different, I guess. The lower plate of the artificial teeth was broken. I don't know whether the upper plate was in good condition or part of the teeth gone, but it wasn't broken, but was lying out of his mouth to the side of his face. It was light enough to make an examination when we got there and started to get dark just as we left. I didn't intend to say that half of the chin was gone, nor nearly gone, but part of it was gone, with more gone on the left side.

REDIRECT EXAMINATION BY MR. BISTLINE:

I didn't make any measurement of the shot pattern on



the roof of the barn, but merely was giving my estimate when I once said five inches and another time said ten inches. This estimate was made as I stood on the floor of the hayloft. Some of the shot showed as far over on the sheeting as five, six or seven inches. A few stray shots were on the east side of the rafter; they would be four or five inches over as they hit while on the diagonal direction and just missed the rafter. The shot pattern was about ten inches in diameter in my best judgment. The piece of denim on the rafter was just mixed up with the shot, just stuff plastered up there. I did not find any flesh on the denim. There was less flesh near the denim than in other places, that, over further, further north. More flesh was on the window there than where the shot marks were. The piece of two by four was south and east of the body, a little above his head to the north, directly over his head as he lay on the floor. He was lying on the floor with his head to the southeast, making the board southeast of his head. The floor just south of where the deceased lay was a rough board floor. The place to put the hay down was open, and he was just north of that, right close. This piece of two by four was close too. I moved it, noticing the hay leaves as did the others. I mentioned it to the county coroner and we determined that it had not been used for any purpose as the leaves had not been disturbed. I didn't make any particular examination around the point where his feet rested. Neither the coroner nor I made any examination in that regard. I did not discover any footmarks or any dis-



turbance on the floor at that end of the barn. No one, in my presence, went up to the gable of the roof where the flesh was to look for shot holes. We made no measurements with tape or rule; all figures are only my estimates. I don't know what the condition of the teeth on the plates was. There was some teeth on the plate, but I don't know how many. The upper was in a whole piece. I am not certain whether the coroner or I picked the teeth up but I think he did. The undertaker may have picked them up when he moved the body.

When I saw the body at the undertaker's parlor, I noticed that scar on his shoulder was just a dark reddish streak. When I said it was three-quarters of an inch wide, I merely made an estimate for I had not measured it. When I was testifying at the coroner's inquest and said that the shot would have to go through his jumper to hit his face, I did not mean that it actually went through his jumper and hit his face.

DR. A. M. NEWTON, witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SHIELDS:

I am Dr. A. M. Newton of Pocatello. I have been a general surgeon for 25 years at Pocatello. I graduated from Northwestern and did clinical work afterward.

Thrombosis is a condition within a blood vessel in which the blood forms a clot and is adherent to the lining of the vessel. A cerebral thrombosis would be the same thing in a vessel of the brain, as in any other vessel of the body. There is little difference in the vessels

of the brain. Of course, there is a difference if it is in an artery other than in some vessel of collateral circulation in the surface. Complete recovery or restoration of original health in a case of cerebral thrombosis depends upon the damage done to the brain tissue.

In a case like the present, where a person suffered thrombosis which produced an illness requiring inactivity making him bedridden for approximately six weeks to two months; and which, when he got up, caused difficulty in walking, difficulty with his right arm which became numb in cold weather so as to cause him to drop things, and which caused a partial impediment of speech, so that at times he could speak clearly and at times not, the duration of which was from December 1, 1935, to February, 1937; and from which he recovered slowly, but continued to improve so that he was apparently quite well at the time of his death except for a speech impediment and numbness in his right hand during cold weather; but an illness from which he continued to get better after leaving his bed, that he recovered from and again began to be interested in things, because of pleasant disposition, began to work around the house and in the yard once to the extent of fixing a tongue in a sleigh; and which left him with a weak right arm causing him to drop things, such as dishes when he was helping his wife, and making him unable to grasp things firmly with his right hand, and which left with an impaired speech so as to make it difficult for people to understand; and yet from which he recovered sufficiently to go to town at least twice

a week and do chores, milking the cows occasionally. I think such illness was probably an involvement of a moderate degree. As to recovery, there is, of course, practically no regeneration of nerve tissues after eighteen months following a nerve injury. Any improvement after that would be in my mind, muscle education. In case of involvement of the nerves after a period of eighteen months, any improvement would be from, as I say, muscle education which comes in the use, for instance, if it is the hands or extremities, in the use of the hands and extremities and the educating and building up of those muscles by use.

I have had experience with gunshot wounds. I served in the base hospital in France during the World War, and I have also seen quite a few of them in civilian practice. I was in France one year, in the hospital practically all of the time. My work dealt exclusively, almost, with treatment of gunshot wounds. I had occasion to see people who had been injured externally from high explosives, such as TNT and bomb explosions. I saw about every kind of gunshot wound and high explosive wound, and every injury of most every kind and every kind of wound that was known at that from every kind of explosive that was in use in the war. And in my practice at home I have seen gunshot wounds, both rifle, revolver and shotgun: I think only one case of a gunshot wound in the face, but rifle and revolver wounds in the head and about the body generally.

If a man had come to his death as a result of a gunshot

wound and I found, upon examining the body, that beginning with the lower jaw bone on the right side midway between the point of the chin and the end of the jaw bone, the jaw bone was fractured and protruded through the cheek, while on the left side the jaw bone was completely shattered to the extent that very little bone was left which could be used in rebuilding the contours of the chin; that on the left side of the face the cheek was shattered and the flesh lay back in about three distinct flaps, open and lying back upon the neck; that one of these tears extended from the left corner of what appeared to have been the mouth to the lower lobe of the ear with several flaps equally long running in fan-like courses from the mouth out; that the left jawbone was gone and that the roof of the mouth was broken in about five pieces which were held together by pieces of connecting tissue so that they might be pushed into something near the original groove to form the contours of the face, the nose and the upper part of the jaw bone; that an examination of the head cavity showed that blood and matter were oozing into the wound through the breaks in the skull and the skull was found to be loose and soft and could easily be manipulated with the hand; that the left eye was out of the socket and lay upon the temporal part of the head; that other than the protruding jaw bone there was no wound on the right side of the face, but that there was a fan-like tear on the left side extending from the point of the chin left to the neck about three inches long, but no hole or wound that could be distinguished beneath the point of the chin

on either side, and portions of the flesh, presumably of the left cheek, were found scattered at various places and distances from the body at the time the body was found. Having this in mind, and in the light of my experiences, I would think that the muzzle of gun that brought about the damage was probably in the individual's mouth at the time of the explosion. This would be so because of the nature of the injury. In my experience with shotgun wounds at close range, there is an absolute destruction of the tissue at the point of entrance, and in this instance there were tears from the mouth radiating on the left side of the face as much as several inches, back to the ear, down to the neck, and upward. That would indicate that there was an explosive effect, rather than a discharge of the shot alone. I do not believe that a charge of shot entering at some distance, or at any distance, the body and face would have caused such as wound as this. I can hardly explain the fracture of the right jaw in any other way than by the explosive action of the gas, the explosion at the muzzle of the gun which is always present at the firing of any gun.

#### CROSS EXAMINATION BY MR. JONES:

I don't know that it would have blown his head off if the muzzle of the gun had been in his mouth when the gun was fired. It was a twelve-gauge Winchester pump shotgun, but I would not say that it would blow his head off. If the muzzle was in his mouth, it should have damaged the upper plate; if it was in the path of the shot, it would have broken it. As I understand it, the path of the shot

was outward toward the left cheek; the cheek was blown out, radiating tears from the mouth backward, upward and downward. I don't think that if the gun had been in the side of the face it would blow the entire side of the face away instead of just leaving tears radiating out. I have never seen a case where the shotgun exploded in the mouth of anyone. In war service, wounds I saw were largely gunshot wounds and high explosives. I never saw any shotgun wounds during my service.

I don't think that if the load from the shotgun had struck the chin and gone along the side of the face it would result in the same wound as has been described. The actual destruction, and by that I mean the actual destruction of the tissue itself, is caused by the charge of shot; and in addition to that, there would be some destruction by the explosive effect. Wherever the shot took effect there would be an absolute destruction of all tissue. I have only seen one case of a shotgun wound of the face. It blew the whole right side of the face off, destroying the tissue. It was at very close range. If this were in the mouth, it would be at close range; likewise if it were under the chin. The eyeball could be blown out of its socket whether the malar bone was broken or not.

HOWARD PACKHAM, recalled as witness on behalf of the defendant, previously being sworn, testified as follows:

DIRECT EXAMINATION BY MR. SHIELDS:

As I remember the upper plate of the deceased's artificial teeth, the right side of the plate was entirely in-



tact. The plate itself was all there, and the teeth were all there on the right side, but on the left side some of the teeth were broken or chipped with part of the teeth still in the plate and some entirely gone, with one or two scattered over the left side of the plate. I did not find those teeth. I don't remember anything definitely about the front part of the teeth.

IRA COREY, recalled as witness on behalf of the defendant, previously being sworn, as follows:

DIRECT EXAMINATION BY MR. BISTLINE:

Since testifying this morning I have been out to the barn where the body of John D. Bowman was found on February 16, 1937, going out there at 12:40 today. I measured the distance across and the circumference of the shot that hit the wall, and the distance from the floor to the top of the sill at the window, and the distance from the floor to where the shot were in the roof, and from the floor to the cross bar, and from the cross bar up to the sheeting, and the distance of where the flesh is north from the cross bar. The window on which the flesh was showing was the south window on the west end of the barn. The diameter of the shot pattern I found to be eight inches. It was in the roof right where the cross bar connects to the rafter, just where they come together as the shot hit. The shot marks on the west side of the rafter were there and closer in, and from these I could observe the course of the shot from the marks. They had come nearly straight up and down, slanting just a little to the south and a trifle to the east. There was a little slope



a little in the southeasterly direction. It was fifty-seven inches from the floor to the bottom of the window sill. I didn't measure the size of the window. The canvas was still hanging on it, appearing to be exactly the same. It was one one hundred and sixteen inches from the floor up to the shot pattern, which was the distance also to the cross bar on which the flesh rested. It was twenty-eight inches from this cross bar to the roof of the loft from the point where I saw flesh on the rafter of the building; twenty-five inches to the place on the gable where there was flesh. It was thirty-eight inches from the pattern on the roof to where the flesh was on the ceiling, and also on the cross bar.

#### CROSS EXAMINATION BY MR. JONES:

There was other flesh than on the pattern. The imprint of the shot was on the rafter and in the sheeting, not in the shingles, but the cross bar, rafter, and some in the sheeting, and some into the shingles. This was the only place where the shot had taken effect and was almost straight up from where the body lay, about two feet to the south of where the feet were on the ceiling, inside the walls and on the roof.

Defendant rests.

MR. SHIELDS: If the court please, comes now the defendant the Kansas City Life Insurance Company and moves the Court to instruct the jury in this case to bring in a verdict in favor of the defendant so far as the claim or demand of the plaintiff is concerned with respect to

double idemnity in this case on the ground that no cause of action is shown here, and I will submit it, if the Court please.

THE COURT: That request will be denied.

MR. SHIELDS: And we may have an exception?

THE COURT: Yes, the exception is allowed.

#### INSTRUCTIONS TO THE JURY:

THE COURT: Gentlemen of the jury, because of the apparent agreement of counsel that there is but one controlling issue in this case, it will be unnecessary to give my instructions a very wide range.

The plaintiff's claim grows out of a contract commonly called or known as a life insurance policy. As in the case of any other contract, such a policy is binding upon all the parties thereto, and the beneficiaries of the insured. By its terms all the rights and obligations of the parties, including the litigants here, the plaintiff and defendant company are defined. In the light of the instructions I give you and the evidence before you, you are to adjudge the rights of the parties fairly and impartially and to render a true and impartial verdict free from all other consideration.

It was competent for the parties to make such agreement as they saw fit to make, and it is your duty as jurors and my duty as presiding judge to enforce the contract as it is written and hold the company to its liability as such liability is defined in the contract of insurance, called the policy, but not beyond that.

I should say to you further that you are not to deal in mere surmises or conjecture as to how the death of the insured occurred. You are to base your findings upon the facts as they are before you, the testimony of the witnesses who have testified before you, and all the facts and circumstances in evidence and reasonable inferences from the proven facts. It is frequently necessary to rely upon inferences to some extent, but they must be inferences and not mere guesses, conjectures, surmises or imagination. Your verdict must be based upon facts. By facts, I mean facts themselves and rational legitimate fair inferences drawn therefrom.

Now then, passing to the consideration of the policy and the real critical issue, the policy provides for insuring the life of John D. Bowman in the sum of two thousand five hundred dollars and provides for and agreed to pay Bertha E. Bowman, the wife of John D. Bowman, the beneficiary therein named, the sum of five thousand dollars, being double the face amount of the policy in the event of accidental death of John D. Bowman, as defined in the policy. It is conceded that the decedent John D. Bowman died from a gunshot wound and there were no other contributing causes. It therefore follows that if the plaintiff is entitled to recover on the item of insurance in the event of accidental death resulting directly and independently from all other causes, from bodily injuries effect solely through external, violent, and accidental means, that is five thousand dollars, if she is entitled to recover on that item; and if she is not entitled to recover

on that item, she would be entitled to recover the sum of two thousand five hundred dollars.

This is a contract subject to all of the ordinary considerations of a contract, binding upon both parties, and with only such rights and obligations as it defines. It was entirely competent for the insurance company to write a policy excluding its double liability if death was caused by suicide. It did choose to do so, and the insured did not choose to have a policy covering suicide for double indemnity, hence there is no double indemnity for death resulting from intentional or self-inflicted wounds, or suicide. If the insured committed suicide, plaintiff should recover only two thousand five hundred dollars; hence if under the instructions I have given you, and from the evidence you find suicide, then your verdict will be for the plaintiff for only two thousand five hundred dollars.

The burden is on the plaintiff to prove by a preponderance of the evidence the facts alleged in her complaint. The answer alleges that the death of the insured, John D. Bowman, was caused by suicide.

Now, gentlemen, the responsibility is upon you fairly and conscientiously to weigh all of the evidence in the case and to determine this controlling issue. The burden of proof, as I have indicated to you, was upon the plaintiff, and in order to recover against the defendant the sum of five thousand dollars, being the double indemnity, the plaintiff must prove that the injury resulted directly and independently of all other causes from accidental bodily injury, and this accidental bodily injury was not caus-

ed by means or acts self-inflicted by the insured, and unless the plaintiff has established these facts by a preponderance of the evidence, that is, unless the facts appear by a preponderance of all of the evidence before you, the plaintiff can only recover the sum of two thousand five hundred dollars.

I need hardly say to you that a preponderance of the evidence does not necessarily mean the greater number of witnesses; it means the greater weight of the testimony or evidence, before you taken as a whole. This is the primary meaning of preponderance and is the meaning used in the law.

It is admitted that the premiums on the policy were paid and that it was in full force and effect at the time of the death of the insured, John D. Bowman, and it is also admitted that there was made due and sufficient proof of death.

As already explained to you, if you find from a preponderance of the evidence that the death of John D. Bowman, the insured by accident resulting directly and independently from all other causes from bodily injury effect solely through external, violent and accidental means, you will find for the plaintiff for five thousand dollars. On the other hand, if you do not find from a preponderance of the evidence that the death of John D. Bowman, the insured, was caused by accident resulting directly and independently from all other causes from bodily injury effect solely through external, violent and accidental means, then your verdict should be in favor

of the plaintiff for only two thousand five hundred dollars.

It is your duty, gentlemen, to follow the instructions in good faith and try to apply them to the evidence fairly and impartially, entirely apart from any consideration except the facts in this case, and conscientiously and impartially render a verdict. The fact that one party is a corporation and the other a natural person, you must disregard.

All of you must concur in finding a verdict. A form of verdict has been prepared. You will have no difficulty in using it. You will notice a blank space left, and as you reach your verdict you will insert therein the amount you arrive at. Your foreman alone need sign the verdict. I will hand you the complaint, the answer and the verdict.

Let the bailiff be sworn and you may retire with the bailiff.

MR. SHIELDS: We would like to save an exception to the instructions.

THE COURT: You may have an exception.

(Whereupon, upon a rendition of a verdict in favor of the plaintiff in the sum of \$5,000.00, the following proceedings were had.)

MR. BISTLINE: We would like an exception, and our motion made for an order or a regular order entered as to the time allowed for the preparation of a bill of exceptions.

THE COURT: You may have your exception; you will have to take that and make your record.

The following orders extending time for preparation, settlement and filing of this Bill of Exceptions (omitting captions) were made and entered:

“The time to file the bill of exceptions and statement of the case by defendant in the above entitled cause is hereby extended to May 27, 1938, and the present term of court is hereby extended for such purposes.

Dated at Pocatello, Idaho, this 28th day of March, 1938.”

“The time to file the bill of exceptions and statement of the case by plaintiff in the above entitled cause is hereby extended to July 26, 1938, and the present term of Court is hereby extended for such purpose.

Dated at Pocatello, Idaho, this 27th day of May, 1938.”

“The time to file the bill of exceptions and statement of the case by defendant in the above entitled cause is hereby extended to August 15, 1938, and the present term of court is hereby extended for such purpose.

Dated this 18th day of July, 1938.”

That on April 20, 1938, defendant filed and served upon plaintiff motion for new trial as follows:

“Comes now the defendant, Kansas City Life Insurance Company, a corporation and moves the Court for new trial of the above entitled cause upon the following grounds, to-wit:

1. That the evidence is insufficient to justify the verdict in the following particular, to-wit: That there is no evidence whatsoever that the death of John D. Bowman resulted directly and independently of all other causes



from bodily injuries affected solely through external, violent and accidental means, which is required by the provisions of the insurance policy sued upon.

2. Error in law occurring at the trial in that the Court erred in not granting defendant's motion for a directed verdict in that there is no evidence whatsoever that the death of John D. Bownian resulted directly and independently of all other causes from bodily injuries affect solely through external, violent and accidental means, which is required by the provisions of the insurance policy sued upon.

This motion is based upon the minutes of the court and the records and files in the above entitled cause."

That said motion was duly heard by the Court on June 15, 1938, and denied, and order denying same made and entered on said date, to which ruling of the court denying said Motion, exception was made by the defendant and allowed by the Court.

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(Title of Court and Cause)

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### STIPULATION

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In this cause it is stipulated by and between the respective parties, through their counsel of record, that the proposed Bill of Exceptions heretofore prepared and lodged is a true, correct, and a complete and perfect Bill

of Exceptions, and that the plaintiff and respondent has no objections thereto or corrections or amendments to offer; and that the same may be settled, signed, sealed, allowed, and certified as the Bill of Exceptions herein, and that there may be included therein the orders extending the time for the settlement of the bill of Exceptions since said Bill of Exceptions was lodged, and that said orders may be made a part thereof and included therein.

It is further stipulated and agreed that said Hon. C. C. Cavanah may sign, seal, settle, allow and certify said Bill of Exceptions at such time and place as said Hon. C. C. Cavanah shall desire; and that the plaintiff and respondent and her counsel waive any notice of the signing, sealing, settling and certifying of said Bill of Exceptions, or the time and place thereof; and said plaintiff and respondent and her counsel waive their right to be present thereat, or notice thereof.

DATED At Pocatello, Idaho, this 15th day of August, 1938.

Dan B. Shields,  
F. M. Bistline,  
Attorneys for Defendant.

Jones, Pomeroy & Jones,  
T. D. Jones,  
Attorneys for Plaintiff.

(Title of Court and Cause)

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CERTIFICATE OF JUDGE TO BILL OF  
EXCEPTIONS.

I, C. C. Cavanah, United States District Judge, before whom the above-entitled action was tried do hereby certify that the matters and proceedings embodied in the foregoing Bill of Exceptions are matters and proceedings occurring in said cause, and the same are hereby made a part of the record therein, and that the above and foregoing Bill of Exceptions contains all the material facts, matters, and proceedings heretofore occurring in said cause and not already a part of the record therein; and contains all the instructions of the Court, and all of the evidence, oral and in writing therein, and is a true BILL OF EXCEPTIONS, and the above and foregoing Bill of Exceptions was duly and regularly filed with the Clerk of the said Court and thereafter duly and regularly served within the time authorized by law and the rules of the United States District Court in the District of Idaho; and that no amendments were proposed to said Bill of Exceptions excepting such as are embodied therein; and that due and regular notice of time for settlement and certifying said Bill of Exceptions was waived by stipulation of counsel, and the said stipulation is hereby made a part of the Bill of Exceptions; that said Bill of Exceptions was duly lodged, notice served on appellee's counsel, and was signed and settled by the Court within the time

authorized by the Court by orders made extending the time for the settling and filing of said Bill of Exceptions, which said orders extending the time are hereby made a part of the Bill of Exceptions.

Done at Boise, Idaho, this 29th day of August, 1938.

CHARLES C. CAVANAH,  
District Judge.

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(Title of Court and Cause)

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ORDER EXTENDING TIME TO FILE  
BILL OF EXCEPTIONS.

Filed March 28, 1938.

The time to file the bill of exceptions and statement of the case by defendant in the above entitled cause is hereby extended to May 27th, 1938, and the present term of court is hereby extended for such purpose.

Dated at Pocatello, Idaho, this 28th day of March 1938.

CHARLES C. CAVANAH,  
District Judge.

(Service accepted March 28, 1938.)

(Title of Court and Cause)

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ORDER EXTENDING TIME TO FILE  
BILL OF EXCEPTIONS

Filed May 25, 1938.

The time to file the bill of exceptions and statement of the case by plaintiff in the above entitled cause is hereby extended to July 27th, 1938, and the present term of court is hereby extended for such purpose.

Dated at Pocatello, Idaho, this 25th day of May, 1938.

CHARLES C. CAVANAH,  
District Judge.

(Service Accepted May 27, 1938.)

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(Title of Court and Cause)

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ORDER EXTENDING TIME FOR FILING  
BILL OF EXCEPTIONS AND EXTENDING  
TERM OF COURT.

Filed July 18, 1938.

The time to file the bill of exceptions and state of the case by defendant in the above entitled cause is hereby extended to August 15th, 1938, and the present term of court is hereby extended for such purpose.

Dated this 18th day of July, 1938.

CHARLES C. CAVANAH,  
District Judge.

(Service Accepted)

(Title of Court and Cause)

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ORDER

Filed August 8, 1938.

Application of the defendant now being made for further extension of time within which to prepare bill of exception and extending the term of Court in the above cause, and after consideration of the same the Court denies said application or the granting of Order extending the time for filing bill of exceptions and extension of the term of Court in said cause.

Dated August 8th, 1938.

CHARLES C. CAVANAH,  
District Judge.

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(Title of Court and Cause)

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PETITION FOR APPEAL

Filed August 31, 1938.

TO THE HON. CHARLES C. CAVANAH, Judge of  
the District Court of the United States of America  
in and for the District of Idaho, Eastern Division:

Your petitioner, Kansas City Life Insurance Company, a corporation, who is defendant in the above entitled cause, prays that it may be permitted to make an appeal from the judgment entered in the above cause on the

26th day of March, 1938, to the United States Circuit Court of Appeals of the Ninth Circuit, for the reasons specified in the Assignments of Error which are filed herewith and your petitioner desires that an order be made fixing the amount of security which said petitioner and defendant shall give to furnish or secure the costs upon appeal and to supersede and stay the judgment pending appeal.

Dated this 30th day of August, 1938.

DAN B. SHIELDS,  
F. M. BISTLINE,  
Attorneys for Petitioner,  
Kansas City Life Insurance  
Company, a corporation.

(Service Accepted August 30, 1938.)

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(Title of Court and Cause)

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ASSIGNMENT OF ERRORS.

Filed August 31, 1938.

Defendant and appellant, Kansas City Life Insurance Company, a corporation, in connection with its petition for an appeal in the above entitled cause, files the following assignments of error upon which it will rely in the prosecution of the appeal herewith petitioned for in said cause:



1. The court erred in denying defendant's motion for nonsuit at the close of the plaintiff's case.

2. The Court erred in denying defendant's motion for a directed verdict at the close of all of the evidence.

3. The court erred in denying defendant's motion for a new trial.

4. That the verdict of the jury was and is contrary to the evidence.

5. The judgment of the court entered herein is contrary to the law.

6. That the evidence was and is insufficient to support a verdict for the plaintiff in excess of \$2,500.00 and accrued interest thereon for the reason that there is no evidence that the insured, John D. Bowman, came to his death by accidental means.

7. That the verdict of the jury is contrary to the evidence for the reason that taking the evidence as a whole, the physical facts are such that they conclusively establish that John D. Bowman's death resulted from suicide.

8. The court erred in entering judgment against the defendant and in favor of plaintiff for the reason that there is no evidence in the record to support said judgment, and that said judgment is contrary to the evidence and contrary to law and that the evidence does not, as a matter of law, justify a judgment in favor of plaintiff.

Dan B. Shields,

F. M. Bistline,

Attorneys for Appellant.

(Service Accepted August 30, 1938.)

(Title of Court and Cause)

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ORDER ALLOWING APPEAL

Filed August 31, 1938.

Upon the Petition for Appeal, accompanied by assignments of error heretofore filed herein, it being made to appear that said petition should be allowed,

IT IS ORDERED that said petition for appeal be and is hereby granted and the appeal allowed; and that upon the giving of a cost bond in the sum of \$300.00 and a supersedeas bond in the sum of \$6,000.00 all proceedings to enforce the judgment herein shall be stayed until said appeal shall be determined, the bonds to be approved by the Court.

Dated the 31st day of August, 1938.

CHARLES C. CAVANAH,  
District Judge.

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(Title of Court and Cause)

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BOND

Filed August 31, 1938.

WHEREAS, the Defendant, Kansas City Life Insurance Company, in the above entitled action, is about to appeal to the Ninth Circuit Court of the United States,

from a judgment made and entered against it in the above entitled court on the 26th day of March, 1938, in favor of the Plaintiff, Bertha E. Bowman, for the sum of FIVE THOUSAND (\$5,000) DOLLARS.

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES and of such appeal, the undersigned, does hereby undertake and promise on the part of the Defendant, that the said Defendant will pay all damages and costs which may be awarded against it on the appeal, or on a dismissal thereof, not exceeding the sum of (\$300.00) THREE HUNDRED DOLLARS, to which amount the undersigned acknowledges itself bound, and

WHEREAS, the Defendant herein is desirous of staying the execution of said judgment so appealed from, the undersigned does further, in consideration thereof and of the premises, undertake and promise, and does acknowledge itself to be further bound in the further sum of SIX THOUSAND (\$6000.00) DOLLARS, lawful money of the United States, that if the said judgment appealed from, or any part thereof, be affirmed or the appeal be dismissed, the Defendant will pay the amount directed to be paid by the said judgment, or the part of such amount as to which the said judgment shall be affirmed if affirmed only in part, and all damages and costs which may be awarded against the Defendant upon such appeal, and if the Defendant does not make payment of such judgment within thirty (30) days after the filing of the

remittitur from the Ninth Circuit Court of the United States, in the court from which the appeal is taken, judgment may be entered upon motion of the plaintiff in her favor and against the undersigned Surety, for such amount, together with interest that may be due thereon, and the damages and costs which may be awarded against the Defendant upon the appeal.

AMERICAN SURETY COMPANY  
OF NEW YORK

By J. A. HODSON,

Resident Vice-President.

Attest: M. KLOTZ,

Resident Asst. Secretary.

(SEAL)

Countersigned: A. B. CHASE,

Resident Agent at Pocatello, Idaho.

Approved:

August 31, st, 1938.

Charles C. Cavanah,

Judge.

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(Title of Court and Cause)

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CITATION ON APPEAL.

Filed September 2, 1938.

UNITED STATES OF AMERICA—ss.

To the plaintiff, Bertha E. Bowman, and her attorneys,  
Jones, Pomeroy & Jones, of Pocatello, Idaho: GREET-  
INGS:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, within thirty days from the date hereof, pursuant to an order allowing appeal from the District Court of the United States in and for the District of Idaho, Eastern Division, in a suit wherein Kansas City Life Insurance Company is appellant, and you, the said Bertha E. Bowman, is the appellee, to show cause, if any there be, why a judgment rendered against Kansas City Life Insurance Company, a corporation, should not be corrected, and why speedy justice should not be done to the parties on that behalf.

WITNESS the HONORABLE CHARLES C. CAVANAH, Judge of the District Court of the United States in and for the District of Idaho, Eastern Division, this the 31st day of August, 1938.

(SEAL)

CHARLES C. CAVANAH,  
District Judge.

ATTEST:

W. D. McREYNOLDS, Clerk.

(Service Accepted September 1, 1938.)

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(Title of Court and Cause)

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ACKNOWLEDGMENT OF SERVICE.

Filed September 2, 1938.

Service of the Following papers, for and on behalf of

the plaintiff, and for and on behalf of ourselves, the undersigned, is admitted:

Cost bond on appeal and Supersedeas Bond  
Praecipe for transcript of record  
Order allowing Appeal  
Citation on Appeal  
Petition for Appeal, and  
Assignment of Errors.

Dated this 1st day of Sept., 1938.

JONES, POMEROY & JONES,  
Attorneys for Plaintiff.

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(Title of Court and Cause)

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PRAECIPE FOR TRANSCRIPT OF RECORD.

Filed September 2, 1938.

TO: The Clerk of the above entitled Court, Hon. W. D. McReynolds, and the plaintiff, Bertha E. Bowman, and her attorneys, Jones, Pomeroy & Jones, of Pocatello, Idaho:

The Clerk is hereby requested to make a transcript of the record to be filed in the United States Circuit Court of Appeals of the Ninth Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such

transcript of the record the following and no other papers, and exhibits, to-wit :

1. The Judgment Roll, consisting of :
2. The complaint.
3. The order for removal to Federal Court.
4. Defendant's Answer.
5. Verdict of jury.
6. Judgment. Also, the
7. Order overruling motion for new trial.
8. Bill of Exceptions, duly settled and allowed by the Court, including all orders extending the time for filing the bill of exceptions ; and certify up all exhibits introduced in evidence.
9. All minute entries and orders made in said cause from the beginning to the end thereof.
10. Petition for appeal.
11. Assignments of error.
12. Order allowing appeal.
13. Cost and supersedeas bond on appeal, showing approval by the Court.
14. Citation on appeal, including acknowledgement of service thereof by the plaintiff and his counsel, or proof of service thereof.
15. Stipulations between counsel filed in this case.
16. This praecipe, together with acknowledgement or proof of service thereof.



Said transcript to be prepared as required by law and the rules of this Court, and the rules of the United States Circuit Court of Appeals, Ninth Circuit, and to be filed in the United States Circuit Court of Appeals for the Ninth Circuit.

DATED This 1st day of Sept., 1938.

F. M. BISTLINE,  
DAN B. SHIELDS,  
Attorneys for Appellant  
Kansas City Life Insurance Co.

(Service accepted September 1, 1938.)

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(Title of Court and Cause)

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#### CERTIFICATE OF CLERK.

I. W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 125 inclusive, to be full, true and correct copie of the pleadings and proceedings in the above entitled cause, and that the same together constitutes the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the Praecipe filed herein.

I further certify that the cost of the record herein

amounts to the sum of \$152.65 and that the same has been paid by the appellant.

Witness my hand and the seal of said Court this 28th day of September, 1938.

(SEAL)

W. D. McREYNOLDS,  
Clerk.

